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SURVEY OF CLIENT SPECIFIC PLANNING PROGRAMS AND THEIR FEASIBILITY AS AN ALTERNATIVE TO INCARCERATION IN CANADA

1992-06

Abstract: *A survey of 27 evaluations of Client Specific Planning (CSP) -- a model of sentencing advocacy designed to punish, supervise, and treat prison-bound offenders in the community.*

This report was prepared on contract for the Corrections Branch, Ministry of the Solicitor General of Canada and is made available as submitted to the Ministry. The views expressed are those of the author and are not necessarily those of the Ministry of the Solicitor General of Canada.

This document is available in French. Ce rapport est disponible en français, sous le titre: "Bilan - Les programmes de planification axée sur le client et leurs chances de succès comme solutions de rechange à l'incarcération au Canada".

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SUMMARY OF FINDINGS

The most significant finding of this survey of 27 evaluations of Client Specific Planning -- a form of sentencing advocacy designed to punish, supervise, and treat prison-bound offenders in the community -- is that CSP represents a paradigm shift; and is therefore especially vulnerable to destabilization by traditional criminal justice institutions.

Indeed, the more a CSP project restricts its intake to prison-bound offenders, the greater the chance that it will experience destabilization. We therefore found support for the hypothesis that some degree of hostility is a sign of the success of such projects.

Client Specific Planning is most effective as a means of decarceration, especially when used to close institutions. As a general form of sentencing advocacy, the Courts have been willing to entertain CSP proposals in about 70 percent of all cases. This suggests that judicial officers do respond favorably to the submission of more information at sentencing -- especially when specific plans are proposed to manage the offender in the community.

In six of the seven studies which employed a Control group for comparison, CSP had a positive impact in either reducing the percent incarcerated or the jail time to be served. However, there was no significant difference in recidivism between the CSP and Control samples -- except where massive transfers of institutional budgets have occurred to community-based programs.

Data from North Carolina suggests that the average cost of a CSP plan may be in the range of $2,000.00 . At present, Canadians pay about $50,400 a year to incarcerate a Federal inmate, and about $1,200 per year to supervise a probationer in the community. If CSP is to be viable, the program will need to be subsidized for every inmate it diverts from institutional settings.

Recommendations for the implementation of a Client Specific Planning project are made, including techniques to prevent "widening the net" and ameliorate hostility from Probation departments.

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A general round of appreciation is also in order to my many friends and colleagues in North America who assisted with this effort: especially Malcolm Young of The Sentencing Project, Washington, D.C.; and Jerome G. Miller and his staff at the National Center on Institutions & Alternatives (NCIA), Alexandria, Virginia.

As always, I would not have been able to complete this project without the love and support of my wife, Carolyn; and our many friends who kept interest high. Points of view in this paper are those of the author, and do not necessarily represent the official position or policies of the Solicitor General of Canada.

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CHAPTER 1:

CORRECTIONAL ALTERNATIVES IN CANADA: THE DILEMMA OF REFORM

> Not long ago, I went back to prison. Some 10 years after my particular twist introduced me to our system of incarceration, I gave a talk to a group of 20 men serving time at a halfway house where I had spent several months....
>
> As we talked, I realized how little had changed in the past decade....Never mind the decade..., I realized how little basic imprisonment philosophy has changed since the 18th century. Considering that Canada spent $1.75 billion last year on a system recognized by those inside and out, guards and administrators alike, as a complete failure, this is unfortunate.
>
> D. Alan Powell [1]

The topic of penal reform is a bit like discussing the Canadian weather: some days good, some days bad, but always persistently there. It has consumed various Parliamentary inquiries, commentators, and interested citizens ever since the first Canadian penitentiary opened in Kingston, circa 1835.[2]

The latest manifestation of this ongoing debate, and one that promises to continue well into the 1990's, is the

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1 D. Alan Powell, "Jails: Any Alternative is Better," **Globe and Mail** 12 August 1991, p.A11.

2 R.C. Smandych, "Beware of the 'Evil American Monster': Upper Canadian views on the need for a Penitentiary, 1930-1834," **Canadian Journal of Criminology** 33(April 1991): 125-147. No.2 .

topic of sentencing reform. With the publication of the report by the Canadian Sentencing Commission in 1987,[3] a new era of mandatory sentencing guidelines was proposed. Modeled after the United States sentencing guidelines, the Commission recommended a mathematical system of grids based on presumptive sentences for each offense, taking into consideration offender characteristics and unique aspects of the crime. Parole was to be abolished, except for life imprisonment offenses; and rehabilitative approaches (i.e., community corrections) de-emphasized in favor of "just deserts." However, the Commission did propose that restraint be one of the guiding principles of sentencing, recommending that the Courts impose the least onerous sanction that would achieve the goals of sentencing. No one satisfactorily explained how a model of intermediate sanctions (sentencing conditions somewhere between simple probation and incarceration) could effectively co-exist along side a mandatory system of presumptive sentences. Indeed, while disparate sentencing was to be eliminated under the new system, few commentators bothered to note that discretion was merely being transferred from the sentencing judges to the police and Crown prosecutors.[4]

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[3] **Sentencing Reform: A Canadian Approach**, Report of the Canadian Sentencing Commission (Ottawa: Minister of Supply & Services Canada, February 1987), 592p.

[4] But see Thomas Gabor, "Looking Back or Moving Forward: Retributivism and the Canadian Sentencing Commission's Proposals," **Canadian J of Criminology** 32 (July 1990): 543.

In 1988, Parliament's Standing Committee on Justice and the Solicitor General began a series of hearings to evaluate the findings of the Sentencing Commission. Called the Daubney Report after its chairman, David Daubney,[5] this study modified many of the recommendations of the Sentencing Commission. For instance, the Daubney Committee called for the retention of the current system of parole (albeit with some modifications), and a guideline system that would be advisory only. Both reports called for the greater use of community-based sanctions.

Just last year, the Federal Ministry of Justice issued a detailed legislative proposal for sentencing reform. Titled **Directions for Reform**, this document proposes substantial changes to the Canadian Criminal Code in the fields of sentencing and corrections.[6] Like the previous recommendations of the Daubney Committee and the Canadian Sentencing Commission, this study called for codification of:

- Purposes of sentencing, to include "the least onerous alternative appropriate in the circumstances" and "rehabilitation" of offenders;

- Creation of a Sentencing and Parole Commission to develop sentencing guidelines;

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5 **Taking Responsibility** Canada. Parliament. House of Commons. Standing Committee on Justice & Solicitor General (Ottawa: Supply and Services Canada, August 1988).

6 "Directions for Reform: Sentencing & Conditional Release," Sentencing Project, Department of Justice (Ottawa: Ministry of Supply & Services, 1990, 2 Volumes).

- Reforms to diminish the use of jail for fine defaulters;

- New "intermediate" sanction provisions for community service orders, restitution, and procedures changes in the sentencing hearing;

- Restrictions on parole eligibility, both with respect minimum eligibility dates and release criteria; and

- Accelerated Release for first-time, non-violent offenders; and delayed release for serious drug offenders.

Indeed, it is now the position of the Canadian Government that "Imprisonment is expensive and accomplishes very little apart from separating offenders from society for a period of time. Calls for reform during the last decade have urged that imprisonment be used only as a last resort and/or reserved for those convicted of only the most serious offenses. In spite of these calls for reform, little has been done."[7]

As seen in Table 1, Canada's incarceration rate was approximately 103 per 100,000 population in 1989 and exceeds most western industrial democracies (with the obvious exception of the United States). International research on the effects of imprisonment suggest that high incarceration

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7 A. Kim Campbell, "Sentencing Reform in Canada," Journal of Canadian Criminology 32 (July 1990): 392 No.3 .

Table 1

Adult Incarceration Rates for Canada in Comparison to Selected Countries in North America, Europe, Asia, and Africa (1989)

Source:
"Americans Behind Bars: A Comparison of International Rates of Incarceration" (Washington, D.C.: The Sentencing Project, January 1991); *Adult Correctional Services in Canada, 1989-90* (Ottawa: Ministry of Supply & Services Canada, 1990), p. 31. Population figure for Canada (1989) was 26,580,000. Chart supplied courtesy of the ACLU National Prison Project *Journal*.

rates do not result in substantial reductions in the crime rate, nor do they deter offenders from committing new crimes.[8] That we could significantly reduce prison populations and not suffer a resulting "crime wave" has been supported both in early release experiments, the experiences of other countries, and research on incapacitation.[9]

Furthermore, use of imprisonment appears to be strongly correlated to certain socioeconomic conditions, most predominantly the rate of unemployment among males.[10]

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8 See generally, National Research Council, DETERRENCE AND INCAPACITATION: ESTIMATING THE EFFECTS OF CRIMINAL SANCTIONS ON CRIME RATES (Washington, D.C.: National Academy Press, 1978).

9 See Report of the Twentieth Century Fund Task Force on Criminal Sentencing, **Fair and Certain Punishment** (1976); See Alternatives to Imprisonment and Measures for the Social Resettlement of Prisoners, Report of the Secretary-General, Committee on Crime Prevention and Control, Eighth Session, 7th U.N.Congress on the Prevention of Crime and the Treatment of Offenders, January 3, 1984 paper (V.84-80062); Brian Sims & J. O'Connell, "Early Releases: Prison Overcrowding and Public Policy Implications" (Olympia, Washington: Office of Financial Management, 1985); Wisconsin, Department of Health and Social Services, Division of Policy and Budget. Bureau of Evaluation. EVALUATION OF SPECIAL ACTION RELEASE (Madison, Wisconsin: 1983); California, Department of Corrections, "Time Served in Prison and Parole Outcome: An Experimental Study," (Sacramento, CA: 1981, Research Rpt. No. 2); Elliott Currie, **Confronting Crime: An American Challenge**(New York: Pantheon, 1985, Chapter 3).

10 See Steven Box and Chris Hale, "Unemployment, Imprisonment, and Prison Overcrowding," **Contemporary Crises** 9(3): 209-228, 1985; Matthew G. Yeager, "Unemployment and Imprisonment," **Journal of Criminal Law and Criminology** 70(4): 586-588 , 1979.

What is even more surprising, given the media's penchant for portraying crime as tabloid journalism, is that a majority (roughly 65 percent) of Canadian citizens would rather see their government develop more community penalties and social programs than build prisons.[11]

In fact, the history of Canadian criminal justice is replete with recommendations for the greater use of alternatives to imprisonment. To quote the Archambault Report of 1938:[12]

> The undeniable responsibility of the state to those held in its custody is to see that they are not returned to freedom worse than when they were taken in charge...The evidence before this Commission convinces us that there are very few, if any, prisoners who enter our penitentiaries who do not leave them worse members of society than when they entered them.

Or the Fauteux Report of 1956:

> [I]t goes without saying that...a great saving of public moneys can be achieved by the use...of probation rather than imprisonment as

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11 A.N. Doob & J.V. Roberts, "Public Punitiveness and Public Knowledge of the Facts: Some Canadian Surveys," in N. Walker & M. Hough (eds). **Public Attitudes to Sentencing: Surveys from Five Countries** (Aldershot, England: Gower Pubs. 1988), Chapter 6, pp.111-133.

12 **Report of the Royal Commission to Investigate the Penal System in Canada** (Ottawa: Printer to the King's Most Excellent Majesty, 1938), p. 100 .

> a means of rehabilitation....This new approach [England's use of alternatives]...has probably resulted from the success of probation and parole and has not, so far as we can ascertain, resulted in any general increase in crime in that country.[13]

Or the Ouimet Committee findings of 1969:[14]

> [T]he Committee maintains that imprisonment or confinement should be used only as an ultimate resort when all other alternatives have failed, but subject to its other recommendations concerning different types of offender and different categories of dispositions.

Notwithstanding the above, most of the research in Canada and elsewhere suggests that alternative measures have failed to act as true diversions from penal populations.[15]

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13 Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada (Ottawa: Queen's Printer, 1956), p.14 & 18.

14 Canadian Committee on Corrections. **Toward Unity: Criminal Justice and Corrections** (Ottawa: Queen's Printer, 1969), p. 204.

15 J.B.L. Chan & R. Ericson, **Decarceration and the Economy of Penal Reform** (Toronto: Centre for Criminology, University of Toronto, 1981); J. Hylton, **Reintegrating the Offender: Assessing the Impact of Community Corrections** (Washington,D.C.: University Press of America, 1981); J. Hylton, "The Growth of Punishment: Imprisonment and Community Corrections in Canada," **Crime and Social Justice** (Summer 1981): 18-28 ; J. Hylton, "Rhetoric and Reality: A Critical Appraisal of Community Correctional Programs," **Crime and Delinquency** 28 (1982): 341-73 ; **International Conference on Alternatives to Imprisonment Report, Toronto, June 8-11, 1980** (Ottawa: Solicitor General of Canada, 1982); K. Menzies & A. Vass, "The Impact of Historical, Legal, and Administrative Differences on a sanction: Community Service

To quote Professor Alan Harland (Temple University):

> The vast majority of recent sentencing reform efforts have not resulted in the use of alternative dispositions for offenders who would previously have been incarcerated. Instead, sanctions such as restitution and community service appear to have gained increased acceptance throughout the criminal justice system, but almost entirely as additional conditions imposed upon offenders who would otherwise have received more traditional probation orders.[16]

Indeed, if we look at current attempts at "community corrections," most of the emphasis is devoted towards offering new programs <u>within</u> penal institutions.[17] Thus, alternative measures co-exist along side penal institutions, with little

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15 (continued)
Orders in England and Ontario," **Howard Journal of Criminal Justice** 28 (Aug. 1989): 204-17;M. Polonoski, **The Community Service Order Program in Ontario 4: Summary** (Toronto: Ministry of Correctional Services, 1981); for a current summary of this research, see Antony A. Vass, **Alternatives to Prison** (London: Sage Publications, 1990).

16 Citing Alan Harland and P. Harris, "Developing and Implementing Alternatives to Incarceration: A Problem of Planned Change in Criminal Justice," **University of Illinois Law Review** (1984): 324 No.2; see also Krisberg and J. Austin, "The Unmet Promise of Alternatives to Incarceration," **Crime and Delinquency** 28(3): 374-409 (1982).

17 See <u>Conference on Special Needs Offenders: Community-Based Programming</u> (Ottawa: John Howard Society of Ottawa, December 1990). Despite the title of the Conference, held December 3, 1990; most of the current initiatives are designed for penal institutions. Consequently, one reads of a "wish list" of in-prison programs and projects designed as an exit to institutions, not as an alternative.

or no impact on reducing rates of imprisonment. This argument, sometimes better known as the "Widening of the Net" thesis, is now accepted as conventional wisdom concerning the impact of alternative measures. It is not, however, without its critics. In her dissertation on imprisonment in the Province of Ontario from 1951 to 1983, Maeve McMahon argued that rates of incarceration were actually decreasing during a period in which some alternative measures were being introduced.[18] Actually, the decrease was concentrated only in Provincial institutions; and resulted largely because of a change in sentencing policy affecting fine defaulters and those imprisoned for public intoxication. Many of these people ended up in halfway houses and on probation -- part of a rationalization of the prison system.

Notwithstanding the above, most of the research literature suggests that alternative measures -- "in the absence of a determined official policy to restrict a parallel expansion in the imposition of custodial sentences -- become supportive and maintain the prison system."[19] Clearly, this is one of the issues which needs to be addressed critically in any evaluation of alternative sentencing.

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18 Maeve W. McMahon, "Changing Penal Trends: Imprisonment and Alternatives in Ontario, 1951-1984" (Unpub. Ph.D. Dissertation: University of Toronto, 1988). The average number in Provincial confinement increased by over 1,000 inmates, starting in 1990.

19 Antony A. Vass, Alternatives to Prison (London: Sage Publications, 1990), p.15.

In his review of the failure of community sanctions to reduce Canada's over-reliance on imprisonment, Professor Anthony Doob (University of Toronto) argues that our current sentencing policy does little to insure that alternatives are effectively used to reduce our reliance on prisons. To quote Professor Doob:

> [W]e tend to put "alternatives" in place with the hope that they will be used instead of imprisonment, yet typically we do not go one step more and do something to ensure that this is the case.[20]

This study of "Client Specific Planning" is an attempt to introduce the reader to an alternative sentencing model at some variance with current sentencing policy. As you will see, "Client Specific Planning" is not really a new model of community sanctioning at all; but a modernized version of some very old practices on how to manage serious offenders in the community.

In the foregoing pages, we shall introduce you to Client Specific Planning (sometimes known as CSP); analyze the failure of an early CSP project in the City of Ottawa, Ontario, circa 1982-84; and review the evaluation literature on Client Specific Planning. Later on, we will summarize these findings for what might be learned about the feasibilty of CSP programs in Canada.

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20 Anthony N. Doob, "Community Sanctions and Imprisonment: Hoping for a Miracle but Not Bothering even to Pray for It," **Canadian Journal of Criminology** 32 (July 1990): 422 .

CHAPTER 2: METHODOLOGY

We began this meta-evaluation by ordering a customized search from the National Criminal Justice Reference Service in Rockville, Maryland (USA) for all bibliographic references to alternative sentencing evaluations, highlighting the Client Specific Planning (CSP) model. Supplementing the above, a search was made of the periodical, Criminal Justice Abstracts;[1] and an international bibliography was obtained from the United Nations Interregional Crime and Justice Research Institute in Rome, Italy.[2] Finally, the computerized information service, DIALOG, was used to search various databases for pertinent evaluations. Throughout, our focus was primarily on formal evaluations conducted by someone external to the agency under study.[3]

Because the Client Specific Planning model is so relatively new to criminal justice (formally beginning in the mid-1960's), The Sentencing Project, Washington, D.C. (USA)

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1 (Willow Tree Press, Inc., Monsey, New York).

2 Research Workshop on Alternatives to Imprisonment, Prepared for the Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August - 7 September 1990 (U.N. Interregional Crime and Justice Research Institute, Rome, Italy, Vols. I & II).

3 Internal reports by CSP projects are plentiful, if not understandably self-serving. See "Correctional Options Incentives Amendments Act," Hearings before the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, 101th Congress, 2nd Session, Serial No. 149, March 21,29 & May 24, 1990. Appendix 10, pp.576-630.

was contacted to provide assistance in locating studies and a mailing list of all known CSP projects in North America. Largely funded by foundations, the Project is a non-profit agency that sponsors a biannual conference on Sentencing Advocacy and serves as a forum for individual advocates and projects.[4] Through the Sentencing Project, a mailing list of 231 project Directors of CSP Sentencing Units (both private practice and agency) was obtained. This list was used to send a mailing, asking each recipient to help locate unpublished evaluations of Client Specific Planning (Wave I). Two subsequent mailings, using the same list, were designed to increase the response rate, and to obtain opinions concerning the optimal strategy for implementing a CSP program. Ultimately, a disappointing response rate of 18.6 percent was obtained. As such, these survey returns were used only to supplement information obtained from personal interviews and the CSP research evaluations.

Of special interest, a Case Study was conducted of a now defunct CSP project in Ottawa, Ontario, which was previously administered by Law Society of Upper Canada via the Ontario Legal Aid Plan. Known as the "Ottawa-Carleton Special Services Project," this Client Specific Planning unit oper-

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[4] See **National Conference on Sentencing Advocacy** (New York: Practising Law Institute, 1989, 1024 pages); and **National Conference on Sentencing Advocacy - 1991** (New York: Practising Law Institute, 1991, 715 pages).

ated from 1982 until 1984. Unfortunately, we were never able to locate any case files or operational memoranda from the Project; but luckily, we did locate several progress reports in the Archives of the Law Society of Upper Canada. One of these reports was an evaluation of the Project conducted by Queen University psychologist Ray D. Peters, Ph.D.[5] Dr. Peters graciously consented to a personal interview; and we were able to locate several other principals, including the former director of the Project, Mr. Edward "Ted" Hughes; a former Case Developer named Ms. Sherry Kulman; and Mr. Harold J. Levy, Esquire, special projects coordinator for the Law Society and later employed by the Legal Aid Plan of Ontario. All of these individuals consented to personal interviews.

Finally, letters soliciting CSP evaluation studies were sent to forty-six criminal justice planning agencies in the United States. We employed this sampling strategy because we suspected that several sentencing units were established in the 1970's, and their evaluations never published. This technique turned out to be unproductive, as nearly all of the agencies had destroyed these records.

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5 Ottawa-Carleton Special Services Project: Evaluation Report, by R.D. Peters, Ph.D. (Kingston, ON: Queens University, Oct. 1983, mimeo, unpublished).

Because of this author's unique vantage point, having been a practising Sentencing Advocate since 1979, contact was made with the Edna McConnell Clark Foundation of New York City, New York; the National Center on Institutions and Alternatives (NCIA) of Alexandria, Virginia; the New York State Division of Probation and Correctional Alternatives; the Community Justice Resource Center of Greensboro, North Carolina; the RAND Corporation, Santa Monica, California; and the Indiana Sentencing Resource Center.

Happenstance also lead to this criminologist to attend the annual meeting of the National Community Sentencing Association held in Detroit, Michigan, August 4-6, 1991. During this meeting, several contacts were made with new agencies and persons having resource material.

As a practising Sentencing Advocate with over a decade of clinical experience, I make no claims to being a neutral observer (if, in fact, such a person exists). I leave it to the reader to judge whether I have been able to present a "balanced" picture of Client Specific Planning.

CHAPTER 3

CLIENT SPECIFIC PLANNING: AN INTRODUCTION TO THE MODEL

The first recorded example of "Client Specific Planning" was performed by the founder of modern probation in North America, Boston shoemaker John Augustus. Writing his memoirs published in 1852,[1] Augustus tells how beginning in 1841, he would provide bail to male and female drunkards destined for the House of Correction. Augustus would persuade the justice to release the defendant to him upon a promise to appear in the next 30 days or so; and in the interim, provided the defendant with temporary housing (often using his own home and the homes of benefactors), counseling, employment, and periodic supervision. For this purpose, John Augustus owned a horse and buggy, and traveled extensively around the city of Boston.

When the Defendant was returned to Court, with an in-person report from Mr. Augustus, usually the defendant would be sentenced to a small fine (one cent and costs) as opposed to several months of confinement. Over the years from 1841 until 1858, he bailed out over 2,000 men and women while helping another 3,000 destitute persons in Boston.

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1 A Report of the Labors of John Augustus, For the Last Ten Years, in Aid of the Unfortunate (Boston: Wright & Hasty Printers, 1852), reprinted in 1984 under the title A Report on the Labors of John Augustus, First Probation Officer, 1784-1859 (American Probation & Parole Association, 1984).

Of no small importance, Augustus tells of the resistance he experienced to his work by police officers, court clerks, bailiffs and jail staff who were paid according to the number of inmates housed in the local gaol. To quote Mr. Augustus:

> for every drunkard whom I bailed the officer was actually losing seventy-five cents, to which he would have been entitled if the case had been otherwise disposed of [in jail]... (p.8)

We will return to this theme -- the political resistance of the criminal justice establishment to Sentencing Advocacy -- in other chapters of this study.

Interestingly enough, the next organized example of Client Specific Planning is found in the activities of the Offender Rehabilitation Project of the Legal Aid Agency for the District of Columbia (Washington, D.C., USA). Begun in 1964 under a grant from the National Legal Aid and Defender Association,[2] a small unit of Sentencing Advocates grew from a staff of two, to a 14-person unit; and today is

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2 A. Kenneth Pye, "The Administration of Criminal Justice," 66 **Columbia Law Review** (1966): 286, 296-99 ; Richard J. Medalie, "The Offender Rehabilitation Project: A New Role for Defense Counsel at Pretrial and Sentencing," 56 **Georgetown Law Journal** 2 (Nov. 1967): 2-16; See also Samuel Dash, et. al., "Demonstrating Rehabilitative Planning as a Defense Strategy," 54 **Cornell Law Review** (Feb. 1969): 408-436 No. 3; **Rehabilitative Planning Services for the Criminal Defense**, Institute of Criminal Law & Procedure, Georgetown University Law Center (Washington, DC: U.S. Government Printing Office, July 1970), pp. 210 & appendices.

probably the oldest formal sentencing program working with Legal Aid clients in North America. Under the auspices of the National Legal Aid and Defender Association, several other "public defender" agencies established "Presentence Service Group" projects, including the Legal Aid Society for the City of New York (started in 1974) and a similar program located in Shelby County, Tennessee circa 1975.[3]

In 1979, a project titled "Client Specific Planning" was started by the National Center on Institutions and Alternatives (hereafter NCIA), under the general sponsorship of the National Legal Aid and Defender Association. Originally conceived as a non-profit research center by Dr. Jerome G. Miller and Herbert Hoelter, NCIA began providing sentencing advocacy services to defense lawyers, through the creation of "alternative" sentencing plans tailored to the defendant's background and offense history. Today, Dr. Jerome Miller, who is best known for closing the Massachusetts Reform School system,[4] is most closely associated with "Client Specific Planning" Model. It was he who coined the phrase, and formalized the presentation of sen-

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3 Judy Barrasso, "Rehabilitative Planning Services in a Public Defender's Office," Offender Rehabilitation 2 (Winter 1977): 153-158 No. 2 .

4 Jerome G. Miller,"The Private Prison Industry: Dilemmas and Proposals" Notre Dame Journal of Law, Ethics & Policy 2 (1986): 465-477 No.2; See also J.G. Miller, Last One Over the Wall: The Massachusetts Experiment in Closing Reform Schools (Columbus, OH: Ohio State University Press, 1991).

tencing plans -- even though the model had been in existence much earlier.

Generic in the sense that Client Specific Planning can be applied at several stages in the criminal justice system, the Model has been used to close juvenile training schools, at the sentencing stage for both juveniles and adults, during pretrial negotiations prior to the entry of a guilty plea, and at parole (early exit from a penal institution under supervision). Theoretically, the CSP model can also be used to de-populate adult prisons.

The starting point for Client Specific Planning is the question: Do any means exist to manage/punish this Defendant in the Community so that society is not assuming too great a risk? This is at variance with the vast majority of dispositions in North America, which use incarceration as the reference point from which offenders and their crimes are evaluated for sanctioning. In effect, each case begins with the assumption -- not always true, however -- that some form of suspended sentence/probation order can be granted.[5]

Because of the concern for "widening the net" previously discussed in Chapter I, "Client Specific Planning" was designed for use with prison-bound offenders, or at least those who are likely to be sentenced to

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5 "Model Sentencing Act", **Crime & Delinquency** 18 (Oct. 1972): 335-370, No.4.

incarceration. For this reason, criminal defense lawyers are considered "gate keepers" for case referrals since it is assumed they have some familiarity with the practices of their local courts and the likelihood their client might be jailed. Additional criteria is a prison recommendation from the prosecuting or Crown attorney, statements from the judge, or a prison recommendation from the Probation Department in their Presentence Report (PSR). By definition, sentencing projects which use a "theoretically pure" CSP model are at odds with most criminal justice agencies.

A case referral begins with a case Developer. These individuals are usually non-lawyers with diverse backgrounds in criminology, psychology, nursing, liberal arts, social work, or prior probation/police experience. It is equally true, however, that persons with non-professional backgrounds can be trained to conduct CSP evaluations -- i.e, ex-offenders, a high school graduate who was a labor organizer, semi-retired workers, and women re-entering the work force. Indeed, formalized training modules have existed for over a decade, and are available through NCIA and The Sentencing Project, Washington,D.C.

The first task of the Case Developer is to consult with the defense attorney concerning the overall "context" of the case (plea, guilty by jury, incarcerated/on bail, specifics of offense, inclinations of judge-prosecutor-probation, etc.). This also involves obtaining Disclosure Brief information, including all police reports, criminal history, a

copy of the plea bargain (if it exists), transcripts, and scheduling information.[6] At this juncture, it is considered good practice to also inspect the Court file for any special documentation which might shed some light on the case (i.e., bail motions re dangerousness, Failure-to-Appear, etc.).

It is not uncommon for a Case Developer to have only two weeks to prepare a workup, but the average is usually closer to 4-6 weeks. Sometimes, the Case Developer has the luxury of several months preparation -- a scheduling advantage much preferred by CSP specialists.

The next task of the Case Developer is to interview the Defendant and conduct a thorough investigation into the client's social history, including contacts with criminal justice, educational, vocational, mental health, and drug treatment agencies with whom he or she has had contact.[7] It is not uncommon that a Case Developer will also interview family members, employers, long-time friends, and even witnesses to the crime.

At this stage in the investigation, it is expedient to develop a "Theory of the Case." This usually involves another meeting the Defense Counsel, as well as consultation with colleagues, to outline a course of action.

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6 See National Conference on Sentencing Advocacy, 1989, Op. Cit., Appendix E & F, pp. 995-1011 .

7 Ibid. p 185.

Next, it falls on the Case Developer to help "order" psychological/psychiatric testing (if indicated); pull records from schooling, employment, past criminal justice contacts (such as juvenile records and prisons); and identify community resources (often called "placements" in the trade) that include employment, treatment agencies, and residential options. Crucial to this work is the identification of community corrections programs: including halfway houses, intensive monitoring, electronic surveillance, house arrest, day programs for offenders, 12-step houses, therapeutic communities (for addicts), and community service placements.[8] It is not uncommon for the enterprising Case Developer to create a hybrid program where none exists.

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[8] See G. Thomas Gitchoff, T. Rodgers, & O. Ivar, "The Privately Commissioned Pre-sentence Report: A Multidisciplinary Approach," **Criminal Justice Journal** 2(2):271-279 1979; G. Thomas Gitchoff & G. Rush, "The Criminological Case Evaluation and Sentencing Recommendation: An Idea Whose Time has Come," **International Journal of Offender Therapy and Comparative Criminology** 33 (1989): 77-83 ; Michael Courlander, "What a Paralegal can do to Improve the Criminal Justice Process," **Legal Assistant Today** (Winter 1986); Michael Courlander, "The Post-Conviction Interview as Preparation for Sentencing," **Legal Assistant Today** (Sept./Oct. 1990); Thomas Allena & Philip Witt, "Using Consultants at Sentencing," **National Trial Lawyer** (1990): 86-88 ; Leonard N. Berman, "Meeting the Goals of Sentencing: The Client Specific Plan," **New England Journal on Criminal and Civil Confinement** 9 (Summer 1983): 331-342 No.2; Leonard Berman and H. J. Hoelter, "Client Specific Planning" **Federal Probation** 45 (1981): 37-43 No.2.; Marcia Shein, Esq. **Sentencing Defense Manual: Advocacy-Practice-Procedure** (New York, NY: Clark Boardman & Co., 1990); Herbert J. Hoelter, "Make the Sentence Fit the Felon" **Judges' Journal** 21 (1982):48-54 No.1; and Herbert Hoelter, "Client Specific Planning: Balancing the Scales at Sentencing" **Criminal Defense** 12(July-Aug. 1981): 10-18 .

Most of the placements used in a Client Specific Plan are not radical departures from correctional options currently available to sentencing judges. The difference is in the presentation of these options to the Court on a case-by-case basis.

One point of departure between a Presentence Report (PSR) and the "Client Specific Plan" is that sentencing options are identified and documented (usually through a letter) in a CSP. If at all possible, the client is also pre-interviewed and accepted for "placement" prior to the sentencing hearing. As you might imagine for residential placements -- such as mental health or drug treatment -- this is a process that can take quite some time, especially if the client is incarcerated.

Likewise, the writing of a CSP plan is at variance with the ordinary Presentence Report. The typical PSR emphasizes the details of the crime, the defendant's prior criminal record, and a sketchy history of the offender with few (if any) intermediate sanctions identified. In contrast, the CSP plan usually begins with a fairly detailed social history of the client identifying problem areas, victimizations, and suggesting factors that lead to the current offense behavior. The offense scenario is then analyzed for patterns that will help identify needed treatment interventions, as well as any "mitigators" which might suggest that the Defendant can be managed in the community under certain special conditions. Thus, an unemployed defendant

who robs a liquor store, while clearly intoxicated, and who uses a plastic gun intuitively suggests an intervention strategy in the community.

Next, a CSP might include any special testing, including psychological or psychiatric evaluations, and medical reports suggesting disabilities. If a client has a history of drug abuse, an assessment documenting such might also be included. Some of the more sophisticated CSP plans often include a section on statistical predictions of success in the community; the results of urinalysis testing while on pretrial supervision; and the like.

A summary or clinical section of the report may be included, followed by a detailed recommendation for sentencing. Take the following example, summarized by Probation Officer Andrew R. Klein.[9] In 1981, a group of three teenagers broke into a skating rink in Quincy, Massachusetts. Once inside the rink, the trio tried to fry frozen pizza stolen from a concession stand, stole $17 from the cash box, and drove a Zamboni machine until the huge ice tender had ingested yards of rubber matting. As a final gesture, the teenagers set fire to an oil drum, which coated the ceiling with soot. Officials estimated the damage at $20,000 -- most of which was for repainting the ceiling so that the rink could be re-opened in Autumn.

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[9] Andrew R. Klein, Alternative Sentencing: A Practitioner's Guide (Cincinnati, OH: Anderson Publishing Co., 1988). p.105-106 .

When they were apprehended, all of the suspects admitted they had been intoxicated on alcohol and valium. Rather than sentencing the defendants to a training school or local jail, Judge Albert Kramer issued suspended sentences and ordered the trio to work for the next fourteen (14) weeks (5 days a week, 8 hours a day), repairing the damages they had caused. In addition, each had to attend an alcohol treatment program.

All summer long, the youths worked in the rink to repair the damages. One teenager, who failed to attend drug treatment programming, was subsequently violated and incarcerated. The other two youngsters successfully completed their probation order, and the rink re-opened on time.

An example of a typical CSP can be found in Appendix A. The reader is strongly encouraged to peruse this example in order to obtain a better idea of the programming that goes into a CSP proposal to the Court.

Once the CSP written plan is presented to Defense Counsel, it is often good "strategy" to have the Case Developer, as well as other possible witnesses, testify at the sentencing hearing. While many judicial officers discourage this practice, relying only on the written CSP report, advocacy in the courtroom is regarded by Case Developers as essential to educating the judiciary on the use intermediate sanctions in prison-bound cases.

CHAPTER 4: THE OTTAWA SPECIAL SERVICES PROJECT: A CASE STUDY

> "I think they killed it largely because of a philosophical bent among benchers who still view the defence of criminals who can't afford to pay a lawyer as a quasi-charity. A vast majority of them have never done a criminal case and never will."[1]
>
> An Ottawa Defense Attorney

Beginning in 1982, the Law Society of Upper Canada authorized the creation of a pilot project on sentencing, titled the Ottawa Special Services Project. The unit ran until early 1984, when the members of Convocation -- the Law Society's Board of Directors -- vetoed continuation of the project. What follows is a case study of that program.

The origin of the project had its beginnings with then Ontario Attorney General, the Honorable R. Roy McMurtry. As part of an effort to reduce the spiraling costs associated with the Legal Aid program, Attorney General McMurtry formed a joint committee of Law Society officials and staff from his own office. Prominent among the interests of McMurtry was the creation of a Public Defender office in

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1 Stephen Bindman, "Lawyers Rap Plan to End Successful Legal-Aid Project," Ottawa Citizen, 3 February, 1984, p.2.

Province of Ontario. This posed a direct challenge to the existing system of legal aid certificates assigned -- on a case-by-case basis -- to private members of the Bar.[2] Out of these discussions, a compromise was apparently conceived to preserve the existing delivery system of indigent legal services; while attempting to reduce costs and improve defense services. From this agenda, the Law Society was directed to investigate a defense "social worker" model then being touted by the National Legal Aid and Defender Association, headquartered in Chicago, Illinois.[3]

To pursue this and other projects, the Law Society hired a recent graduate from the University of Toronto's Osgoode Hall, Harold J. Levy. A young, liberal attorney with extensive credentials in journalism, Levy set about to hire consultants to conduct a survey of legal aid services in Ontario (chiefly using Toronto for data), and to help formulate a model pilot program. He ultimately settled upon a private consulting firm called the National Defender Institute, run by Marshall Hartman and Nancy Goldberg. Both Hartman and Goldberg has extensive experience with NLADA, and had helped run a pilot program in Cook County, Illinois,

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2 Interview with Harold J. Levy, Esq., September 17, 1991; Toronto, Ontario.

3 See Leonard Edwards, "The Defense Attorney at the Dispositional Hearing: The Need for Social Worker Assistance," **NLADA Briefcase** (Dec-Jan. 1976-77): 48-54.

using social workers trained to assist lawyers and their indigent clients.

Hartman and Goldberg ultimately filed a report in May of 1980, the results of which are summarized in Levy's own report to Convocation, titled "Social Work Project."[4] A overwhelming majority of the 470 attorneys, members of the judiciary, and various criminal justice agencies interviewed endorsed the need for "social workers," who could help prepare social history reports and investigate sentencing alternatives.

Indeed, 50 percent of the lawyers stated to the interviewers that they had used social workers in private criminal cases; and 43 percent had used them in legal aid cases. However, when a random check was made of Legal Aid files, no authorizations for the use of social workers in criminal cases could be found.[5] It later became evident that Legal Aid Attorneys were not using a formal advocacy model employing social workers to prepare detailed sentencing evaluations; but were instead relying on the efforts of organizations such as the John Howard Association and the Elizabeth Fry Society to provide adhoc services -- usually in the form of a community resource placement (counseling, job assistance, residence, etc.). In fact, the Executive

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4 Harold J. Levy, "Social Work Project" (Toronto: Law Society of Upper Canada, December 31, 1980), indexed as Exhibit B: Minutes of November 20, 1981 Convocation.

5 Ibid., p. 2,4.

Director of Toronto's John Howard Society was inundated with requests for services by Legal Aid attorneys and wanted to charge the Law Society a fee-for-service.

To repeat, the Legal Aid Plan for Ontario was expending little or no monies for the kind of pre-plea/post-conviction advocacy envisioned by the use of social workers. While individual lawyers might charge an hour or two trying to develop resources for their indigent clients; basically, the work was not being done in any comprehensive fashion. Clearly, the creation of a social work unit for Legal Aid attorneys meant an expansion of resources available to Counsel and their clients.

Ultimately, Levy and his consultants recommended that the Law Society establish a 2-year pilot project, designed to "improve the quality of legal defense services provided by Ontario Legal Aid plan clients who are criminally accused in a cost-effective manner."[6] An additional goal, but never clearly articulated in terms of priorities, was that social workers would decrease the cost of attorney services on cases. Just why decreased costs would occur, when the services had never really been provided in the past, was never really addressed. Nevertheless, in a report by Chairman Lee K. Ferrier, Chairman of Joint Committee to the Legal Aid Committee, it was noted:

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6 Ibid., p.17 .

> The Project is in part based on the knowledge that a considerable part of a lawyer's time is currently spent on social work matters which can be done less expensively and often more efficiently by trained social workers.[7]

In addition, the report mentioned that social workers would be able to use their skills to help develop "various alternatives to incarceration," as well as provide clients with much-needed counseling.

On November 20, 1981, members of the Law Society's Convocation approved a 2-year pilot project to be established in Ottawa. Just why Ottawa was selected over Toronto, which was the preferred site recommended by the consultants and Mr. Levy, was never made entirely clear. In any event, various members of the Ottawa Bar were enthusiastic about the Project being headquartered in their city. Convocation subsequently endorsed a budget that provided for the expenditure of about $199,100 for the Fiscal year April 1, 1982 to March 31, 1983.[8] The budget called for the hiring of four staff persons, to be comprised of a Chief Social Worker, two staff social workers, and a secretary. Only $5,000.00 was allocated for a formal evaluation. In the ensuing months, Harold Levy secured the services of Edward D. "Ted" Hughes, a 25-year veteran of

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7 Schedule B(i), November 20, 1981 Minutes of Convocation.

8 Ibid., Appendice F.

police and corrections work in Ontario. Ms. Sherry Kulman and Michelle Fish, two young criminologists who had just graduated with their masters degrees from the Univer-sity of Ottawa, were hired as staff; as well as a secretary, Ms. Jacqueline Ralston.

Special Projects Co-ordinator Harold Levy persuaded Queens University psychologist Ray Peters, Ph.D., to undertake an evaluation of the project; and in collaboration with two graduate assistants; he began to develop data collection forms.

By July 19 1982, the project was up and running, having obtained forty-seven (47) referrals from defense attorneys. Both Levy and Hughes were instrumental in meeting with various community agencies, but especially with members of the Ottawa Defense Bar to familiarize them with the project and encourage them to use it. In fact, Levy was making a weekly trip to Ottawa just for the purpose of educating members of the Bar. Case evaluations returned after disposition began to read:[9]

> The report was complete, extensive, well prepared and expertly presented. The assistance of your office was greatly appreciated by myself and the client's family.

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[9] Interview with Harold J. Levy, Esq., September 17, 1991; Toronto, Ontario; See also "Report to Legal Aid Committee on Social Worker Project - Ottawa," Schedule E, September 24, 1982 Minutes of Convocation, Upper Law Society of Canada Archives.

> I wish to express my appreciation for the excellent work performed by the Special Services Project. The quality of a service such as this is best measured by its ability to handle a difficult case. The difficulties involved in placing Miss ____ appeared insurmountable at times but the Project unlike some other social agencies did not give up hope.

While the project was underway, then Chairman of the Ontario Legal Aid Plan, James B. Chadwick, wrote a letter to Attorney General McMurtry, in which he stated:

> We are hopeful that the Social Worker Project will help to reduce the cost of the delivery of legal aid services under legal aid certificates.[10]

The letter also noted that it was the purpose of the project to explore alternatives to imprisonment and to assist families involved in criminal justice offenses.

Sometime in early 1983, as Fiscal Year 1982-1983 was drawing to a close, Ted Hughes received word from the Legal Aid Office in Toronto that his FY 83-84 budget would have to be reduced substantially. To prevent the closure of the Project, Mr. Hughes re-joined his position with the Ontario Ministry of Correctional Services (thereby eliminating his salary); and made other budget cuts. Notwithstanding the

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10 See Exhibit C, Item 1(a), June 25, 1982 Minutes of Convocation, Upper Law Society of Canada Archives.

above, Mr. Hughes was still able to spend one day a week supervising his two case workers, who were now handling all of the sentencing work-ups. According to Harold Levy, the Project's special co-ordinator:[11]

> About this time, we started hearing rumblings that the Project was in trouble. I had always been really nervous about the Project from the start, because I didn't believe the Law Society really endorsed this program. And some of the Benchers resented the A.G. for initiating this.

This led to pressure on Professor Ray Peters to complete his evaluation of the Project, which he did in October of 1983.[12] At the outset, it is worth repeating that Prof. Peters performed this evaluation for $5,000.00, largely with the help of young, graduate research assistants.

Data for the evaluation was collected on all case referrals from April 1, 1982 to September 30, 1983; and case dispositions (closures) from the April date until June 30, 1983. Total case referrals amounted to 273 cases, or 15 cases per month.[13] By the end of June 30, 1983; a total of 183 cases had been closed via disposition. Peters

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11 Interview with Harold J. Levy, Esq., September 17, 1991; Toronto, Ontario.

12 Ottawa-Carleton Special Services Project: Evaluation Report, by R.D. Peters, Ph.D. (Kingston, ON: Queens University, Oct. 1983, mimeo, unpublished).

13 Ibid., p. 8.

discovered that 50 percent of the most active Legal Aid attorneys had used the project, with very strong majorities indicating that they were "extremely satisfied" with the Project's work. In fact, 23 of the top 25 Legal Aid Attorneys (as measured by legal Aid cases handled) had made referrals to the Project. Of those lawyers who used the Project, most said that they referred only "difficult" cases, usually involving offenders who were mentally retarded, ill, repeat offenders, or those with histories of failure in the community.[14]

Although an attempt was made to ascertain whether the Project was truly diverting jail-bound clients,[15] there were no intake criteria to affect this goal, and the observations remained anecdotal. Nevertheless, attorneys from the local Criminal Defense organization lauded the reports from the Project as being more informative and helpful than traditional Probation reports; felt that the case workers helped immensely in making community placements and gathering records; and stated that the resulting reports often speeded

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14 Ibid., p.15 .

15 This was done by comparing the category of offense against the entire Legal Aid Caseload (N=3040), and those cases handled by the Project (N=183). Prof. Peters' data tended to suggest that the Project may have handled more homicides, rapes, and fraud cases; but the differences were not overwhelming. Ibid., p.14 .

up disposition (pleas were entered and there was no need to delay for the preparation of a Presentence Report by the Probation Department).[16]

Prof. Peters also attempted to look at the impact of case preparation on disposition, by drawing two presumably comparable samples: one being a sample of 36 Project cases that had been closed via disposition; and the other being a comparison sample of other Legal Aid cases (N=36). In theory, these two samples had been matched on the basis of offense, previous criminal record, age, sex, marital status, education, and employment status. Unfortunately, the report never provided any tables to allow the reader to examine the statistical accuracy of the matching design, nor the coding process used. In addition, we never were able to learn if variables such as "detained pending sentence" or "convicted by trial" were utilized as controls. The literature reflects that these variables are highly correlated to sentencing outcomes.[17] Beyond the above reservations, no statistical procedure (regression, co-variance, etc.) was used to correct potential defects in the samples; and the samples were very small -- a characteristic which makes a matching design suspect. Equally troublesome was the realization that there was no evidence that either sample was

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16 Ibid., p.35-36.

17 See generally, National Research Council, Research on Sentencing: The Search for Reform, Volume I (Washington, D.C.: National Academy Press, 1983), p.18.

representative of the universe from which they were drawn. Despite all of the above limitations, the resulting Table (below) produced some provocative findings:[18]

TABLE 2

Disposition By Special Services Project and Comparison Group

Disposition	SSP Group	Comparison Group
No. Jailed	15 (42%)	17 (47%)
Average Jail Sentence	179 days	265 days
Number Probated	26 (72%)	14 (39%)
Number Fed. Pent.	0	2
No. Fined Average	3 (8%) $200	8 (22%) $291
Charge Withdrawn	0	1
Community Service	2	1
TOTAL SAMPLE	36	36

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18 Ibid., p. 39.

Clearly, one of the most interesting findings was the difference in both the average jail sentence and the proportion of those granted probation. If the findings could be believed, and we suspect both samples are tainted, then clients served by the Project received a jail sentence one-third (1/3) less than their counterparts who did not obtain advocacy services. In a similar vein, almost twice as many Project clients received a grant of probation as did the comparison group.

On the basis of this one table, extrapolations were made to the entire sample. For instance, the average cost of a Project case was estimated to be about $212.00, taking approximately 8.6 hours of staff time per case.[19] By taking average incarceration costs (both Provincial and Federal) and subtracting one-third off for mandatory release, Peters came up with an estimate that the average savings per Project case was about $3,000.00 less than the Comparison sample case. He then concluded:[20]

> If one accepts the figures presented..., then the estimated cost-benefit value, for 180 clients per year would be $540,000 minus $125,600 (the cost of operating the Project for one year) or a total value of slightly in excess of $400,000 per year.

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19 Ibid., p. 48.

20 Ibid., p.50 .

One may also question the incarceration costs, since prisons are generally fixed-budget items whose labor-intensive expenses remain the same regardless of populations levels.

Nevertheless, Peters' evaluation raised an intriguing question: could savings accrue to the Government as well as benefits to the Defendant as a result of sentencing advocacy, by transferring more resources to the pre-disposition phase of the criminal justice system? To his credit, Professor Peters concluded that his findings "must be viewed as tentative and suggestive only, due to the small number of clients (36 in each group)."[21]

He concluded by noting that available evidence indicated that the Project was accomplishing its goals; and that it should be continued for another two years so that a more accurate determination of the Project's impact could be made.

Despite these promising results, Harold Levy was still hearing rumors that the Project was doomed. In preparation for hearings before the Legal Aid Committee to be held in October and November of 1983, Levy assembled a cast of witnesses that included Ted Hughes, Prof. Ray Peters, and Paul Sonnichsen from the Ministry of the Solicitor General, Canada. Included also were 11 letters of support from the community. As a representative of the Federal government,

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21 Ibid., p. 57.

Sonnichsen was prepared to share half the costs of the Project (thereby reducing yearly costs from $130,000 to $65,000), if the Law Society continued the Project for another three years to permit a thorough evaluation.[22]

According to Levy and all of the witnesses, their reception by the Legal Aid Committee was nothing less than hostile. Harold Levy observes:[23]

> The Committee members had hoped that the Project would go away and die. But they soon realized that they had created a baby that couldn't be contained. The results and support for the project were too promising, so they made an end run. They recommended continuation of the Project "on paper." What they obviously said to their colleagues in Convocation was something quite different.

The Committee ultimately recommended that the Project be extended for three years, on condition that funding be obtained from the Solicitor General of Canada, and that the Project be allowed to evaluate private referrals on a fee-for-service basis.

From what little that can be determined, the debate in Convocation revolved around two general issues. First, it

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22 Minutes of Convocation for January 27th, 1984; Law Society of Upper Canada, Toronto, Ontario.

23 Interview with Harold J. Levy, Esq., September 17, 1991; Toronto, Ontario.

was determined that the average cost of Legal Aid certificate cases in Ottawa had increased to about $1,000 each, instead of decreasing. To quote the Minutes:[24]

> The concern of the Chairman is that the project, when originally conceived, was implemented on the basis that the costs of the operation of the Legal Aid Plan would be somewhat reduced since lawyers time would not be required as before and in some cases would be substituted by the services of project social workers. This benefit did not materialize and, in fact, the average cost of legal aid certificates issues in Ottawa did not decrease but increased.

The other concern was more philosophical in nature: did social work services belong within the ambit of "legal" services to be provided indigent criminal defendants?

On an unrecorded voice vote, Convocation voted to terminate the Project, effective the end of the Fiscal year. As a result of this vote, a chorus of criticism from the Ottawa Defense Bar ensued, including editorials in the Ottawa Citizen.[25] The unrest was so compelling that the Legal Aid Committee re-submitted its original recommendation to Convocation on March 23, 1984. This time, the only

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24 Minutes of Convocation for January 27th, 1984; Law Society of Upper Canada, Toronto, Ontario.

25 "A Program Worth Continuing," Ottawa Citizen 8 February 1984, p.8; See also Stephen Bindman, "Lawyers Rap Plan to End Successful Legal-Aid Project," Ottawa Citizen, 3 February, 1984, p.2.

motion which carried was a resolution endorsing "the principle of the Ottawa Social Worker Pilot Project" and supporting "such applications as may be made to the Federal and Provincial Governments for funding."[26] In response, an editorial in the Ottawa Citizen was scathing:

> If everyone agrees that the project is valuable, that it improves the quality of justice and saves money in the bargain, then it matters not whether it is defined as legal aid, social work, or particle physics -- it is an element of the legal process worth preserving.
>
> If the law society is prepared to see a worthy project die because it doesn't fit neatly into [its] own rigid bureaucratic pigeon-hole, it has abdicated any pretense of leadership within the legal profession.[27]

In what is a preview of findings to come, I have labeled this activity "de-stabilization," reflecting activity on the part of governing bodies that is manifestly political and ideological in origin, and designed to maintain established hegemony.

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26 Minutes of Convocation for March 23, 1984; Law Society of Upper Canada, Toronto, Ontario.

27 "A Program Well Worth Saving," Ottawa Citizen, 29 March 1984, p.8.

CHAPTER 5:

A SURVEY OF FORMAL CSP EVALUATIONS

We now proceed to a more cursory examination of 26 evaluations of the Client Specific Planning Model. Each study is briefly summarized for its most salient findings. Later in chapter 6, we hope to incorporate these findings into several trends so that impact of CSP can be more fully analyzed.

a. Clements' Dissertation

One of the more sophisticated studies of "Client Specific Planning" is the 1987 doctoral thesis by sociologist W. Harold Clements.[1] He studied 117 CSP cases drawn from the National Center on Institutions and Alternatives in Alexandria, Virginia. All of these Fiscal Year 1982 cases were adult felony dispositions (sentencing) in the Washington, D.C. metropolitan area. Using criminal court indexes, he drew a comparison sample of 141 cases, matched across age, socio-economic status, race, sex, prior record, and offense seriousness . Despite a careful attempt to develop a matched sample, Clements admitted that the CSP experimental group was probably a more serious offender

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1 William Harold Clements, "The Effectiveness of Client Specific Planning as an Alternative Sentence" (University of Delaware, Sociology, 1987: University Microfilms International Order No. 87-19523, Ann Arbor, Michigan).

sample.[2] Indeed, "NCIA clients averaged almost twice as much incarcerated prior to disposition (20.2 weeks) as those in the comparison group (13.8 weeks)."[3]

With respect to the CSP sample only, Clements found that judges accepted 53 percent of the cases in whole or part. Forty-seven (47%) were rejected, a figure which was strongly influenced by whether the offense was a violent, person-to-person crime; the client Afro-American; the detention (bail) status; and whether the case went to trial or to a guilty plea.

Clements found that even when the judge rejected the CSP proposal, members of the judiciary were supportive of the CSP concept and its intentions. Only 1 out of 36 recorded judicial comments among the rejected cases voiced dissatisfaction with Client Specific Planning. Nevertheless, judicial acceptance of plans was not nearly as high as rhetorical support expressed by the judges.[4]

Outcome was measured across three dependent variables: an interval severity scale from 0 to 80 (80 equals capital punishment); re-arrest figures from a 24-month follow-up

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2 Ibid., p.154-155.

3 Ibid., p.197. Unfortunately, Clements' sampling procedure was also silent with respect to the percentage of cases in each group ending in a guilty plea vis-a-vis trial.

4 Ibid., p.183.

sample of only those CSP and matching cases where the defendant was released to supervision (or short jail followed by supervision); and a dichotomous probation/incarceration variable.

With respect to the Severity Scale, Clements found no significant differences between the control group and the CSP cases which were accepted by the Courts. However, for those CSP cases which were rejected, or only partially accepted, sentence severity was greater than the matched controls.[5] In fact, when Clements looked at the length of prison sentences among both the matched comparison group and CSP cases, there was no significant difference; and the comparison group received probated sentences that were, on the average, almost 17 months shorter than the CSP sample -- a finding which is consistent with the theory of alternative sentencing espoused by Client Specific Planning.[6]

When the dichotomous, probation/prison outcome was examined, the results were quite different: CSP cases that were accepted by the Courts were significantly less likely to be imprisoned than controls. There was no difference among the control sample and CSP cases that were partially accepted; and "rejected" CSP cases suffered much higher

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5 Ibid., p.190.

6 Ibid., p.206-211. CSP sentences are specifically designed to be more punitive and longer (supervision-wise) than traditional grants of probation.

rates of imprisonment than controls.[7] This ultimately lead Clements to suspect that either the CSP sample was truly a more serious population than his matched controls, or that when a CSP plan for a client was rejected, it carried a greater "dangerous" stigma among judges, and was sentenced more harshly.[8]

When the recidivism sample was analyzed,[9] there was no statistically significant difference between the CSP and the matched comparison group, at least as measured by re-arrests during a 24-month follow-up. For unknown reasons, however, CSP defendants were less likely to commit new, violent offenses than their matched counterparts; and conversely, more likely to commit new property and drug offenses.[10]

Clements concluded that Client Specific Planning was a more effective technique for reducing rates of imprisonment than recidivism, and at this stage was ineffectual largely because (1) the program impacted on only a small percentage of the total criminal cases in the jurisdiction (about 4

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7 Ibid., p.218-223.

8 Ibid., p.284,293.

9 Clements admitted that by not following up on those sample members who were imprisoned, these findings do not represent to total impact of both CSP and the matched comparison group. Ibid., p. 235.

10 Ibid., p.237, 269.

percent); and the judges were reluctant to use alternative sentences. He wrote: [11]

> *Until the notion of diversion is accepted on a larger level and supported both economically and politically, it will be extremely difficult to impact on the larger overcrowding and pathology producing problems of incarceration.*

b. RAND Corporation Study

One of the few, truly randomized experiments with Client Specific Planning occurred between 1985 and 1987 in the County of Los Angeles, California (USA). As a result of a grant from a private foundation, the National Center on Institutions and Alternatives (NCIA) started a CSP project in conjunction with the Los Angeles County Public Defender's Office, Juvenile Division. This pilot project was to be evaluated using a truly-randomized design.[12]

Case acceptance criteria were developed in which Deputy Public Defenders would only refer cases where there was an indication the Ward would be sent to the California Youth

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11 Ibid., p.298.

12 Peter W. Greenwood & Susan Turner, "The Impact of Private Pre-Sentence Reports on Dispositions for Serious Juvenile Offenders," (Santa Monica, Calif: Rand Corporation, Working Draft No. WD-5594-OJJDP, July 1991).

Authority (CYA) -- that state's version of training schools for the most serious offenders. One specific criteria was a recommendation by the Probation Department that the youth be committed to CYA. This was designed to reduce the "widening the net" problem inherent to so many "alternative" projects; but also meant that, by definition, the project would be at odds with the Probation Department.

After a referral by a public defender, and assuming that the case was serious enough to merit a CYA recommendation by Probation, researchers at the RAND Corporation were contacted to determine whether the case would be "treated" with a Client Specific Planning work-up, or placed into a control group. This process ultimately resulted in 123 cases in the CSP group and 120 in the Control group.

Before discussing the results of the Project, it is important to note the political environment in which the Project operated. Both the Probation Department (which had been under budgetary threat by the County Board of Supervisors) as well as the Presiding Judge of Juvenile Court (who inherited the project shortly after it started) were hostile. Almost immediately, general access to the juvenile hall was eliminated, and CSP workers had to get individual court orders to interview their clients. The project experienced considerable resistance by placements (chiefly group homes) that were dependent on the Department for their funds. Thus, it became nearly impossible to get small group home operators to accept NCIA clients; and the

project began obtaining placements outside the county of Los Angeles. Even then, many of the small group homes declined further placements when they mysteriously experienced delays in payment for the wards under their care.

Ultimately, the Probation Department prevailed upon the Presiding Judge to curtail NCIA's practice of obtaining a specific alternative placement (usually a group home); and ordered all the juvenile judges to make only generic placement orders when accepting an NCIA plan. Indeed, throughout its short tenure, the Project was temporarily suspended twice by the Presiding Judge, who accused NCIA staff of being "overly aggressive" or "disrupting the juvenile hall," among other reasons.[13]

At the end of the grant period in 1987, the Project was abruptly disbanded by the new Presiding Judge, who issued a letter (written by high-level officials in the Probation Department) criticizing the program for being ineffective.

At this juncture, it may be interesting to actually examine the impact of the Project. According to the evaluation by the Rand Corporation, there was a dramatic difference between the percentage of experimentals and controls who were committed to the California Youth Authority.

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13 Matthew G. Yeager, "Barriers to Alternative Sentencing: A Case Study of Destabilization in the Private Sector" (Paper delivered at 1986 Annual Meeting of American Society of Criminology, Irvine, California, March 1, 1986, mimeo).

The difference was 28 percent for CSP clients, and 51 percent for controls, almost twice the rate without advocacy services at disposition.[14] The majority of this displacement was concentrated in the differentials for group home placement: 36 percent of CSP clients were placed in group homes compared to only 5 percent of the control group. Although recidivism data was unavailable because the Federal Government refused to provide additional funding, researchers were able to follow-up on placement status one (1) year after disposition. The failure rates[15] per the three major placements were as follows: 26 percent failure for Probation camp; 32 percent for group homes; and 37 percent for Home on Probation. There was no statistically significant difference between Experimentals and Controls along these placement outcomes.

It must be again emphasized that the CSP plans contained traditional juvenile programming recommendations (although alternatives to CYA); and in many cases -- well over half -- either the judge or the Probation Department failed to follow the placement recommendations made by the NCIA case developers.[16]

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14 Greenwood & Turner, Op.Cit., p. 16. This meant that about 70 percent of CSP recommendations were fully or partially accepted by the courts.

15 Ibid., p. 18-19. Failure was defined as the percentage of clients in jail or AWOL after one year, excluding unknown cases (8% of N=135).

16 Ibid., p.17-18.

Although the NCIA project was de-stabilized in a hostile political environment, and must therefore be regarded as an "implementation" failure; the Project did show promise in reducing CYA commitment rates. Indeed, after its demise, the Los Angeles County Public Defender implemented its own social worker unit to help its lawyers with sentencing advocacy.

c. Hawaii Advocacy Project

Between July 1989 and January 1990, staff from the National Center on Institutions and Alternatives (NCIA) were contracted by the Hawaii Department of Corrections to help de-populate the Island's only juvenile training school, located 15 miles north of Honolulu. At the time of NCIA's intervention, the facility held 75 male and female wards -- many of whom were property offenders (86%) and serving short-term jail sentences.[17]

This project grew out of concern -- including the probability of legal action by the American Civil Liberties Union -- over the conditions at Hawaii's only prison for teenagers. In addition, several legislative and professional reports had criticized the State for failing to

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17 Andrew Rutherford, "Assessment of the Hawaii Youth Advocacy Project" (England: Faculty of Law, University of Southhampton, mimeo, June 1990). pp.11-12.

implement reforms, especially community programs for delinquents. At the time, the Department had been considering new construction to increase bedspace from 82 to 150 beds.

Although it had been NCIA's goal to obtain release plans for at least 42 youth during a six-month interval, twenty-six (26) teenagers were actually released to community supervision plans.[18] Part of the reason for not securing more releases was because the 6-month time frame was not long enough to process all the cases and secure community programs for them. Moreover, there was no transfer of funding from the institutional environment to community-based services by the Department of Corrections; and staff within the training school were overtly hostile to the NCIA project (they felt threatened over the potential loss of their jobs).[19]

Despite these obstacles, the intervention was successful in releasing 26 serious offenders to the community.[20] In fact, when the project was disbanded (the Department of Corrections elected not to renew its contract with NCIA, and brought in the John Howard Society of Hawaii for continued services); total population had declined to 32 youngsters (a 57% decrease). Nevertheless, by May of 1990,

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18 Ibid., p.10, 12.

19 Ibid., p.12-15.

20 NCIA elected to concentrate on those delinquents serving the longest sentences as opposed to short-term commitments. Ibid., p.11.

population levels had climbed back to 76 inmates; and John Howard staff were accused of being too "non-confrontational" in securing releases from the institution.

A preliminary recidivism study, which covered a period of six months indicated that only 4 of the 26 serious delinquents had been re-arrested.[21] Despite the apparent failure of NCIA to continue the project, there have been some long-term benefits. According to Mr. Wayne Matsuo, Director of Hawaii's Office for Youth Services, the institutional population is now about 52 delinquents. Their own studies indicate that only 10 of these inmates require a locked environment; and as a result, Mr. Matsuo's office has secured funds to build a new, 30-bed secure facility for the entire state, and turn the existing facility into an adult women's institution. In addition, the John Howard Society has been replaced with a firm from Boston, Massachusetts called C.O.R.E., that is now implementing more sophisticated community programs, and beginning to again de-populate the existing training school.[22] In summation, Mr. Matsuo states: "NCIA took all the punches and the bleeding. But they proved that serious delinquents could be released from confinement without raping and pillaging the community."

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21 Ibid., p.18 .

22 October 17, 1991 telephone interview with Wayne Matsuo, Director of the Office of Youth Services, Department of Human Services, Honolulu, Hawaii.

d. Three NCIA Studies

In addition to Clements' more sophisticated, statistical report, there have been several other studies of Client Specific Planning involving the National Center on Institutions and Alternatives (NCIA).

The first was a privately-commissioned consultant's report by the Edna McConnell Clark Foundation (New York City); it's author was Malcolm M. Feeley.[23] At the time of this evaluation, NCIA had completed approximately 354 CSP work-ups during 1979-1981; self-reporting a 57 percent acceptance rate, 11 percent conditional acceptances; and a 32 percent rejection rate.

Feeley proceeded to draw 80 of the most recent CSP plans that had been either fully or conditionally accepted by the courts in Metropolitan, Washington,D.C. No re-arrest data was available; there was no comparison group; and because Feeley truncated the sample by only looking at so-called positive CSPs, these results must be read accordingly.

The basic methodology was to interview all of the public defenders, judges, and prosecutors involved in each of the 80 cases to assess their opinions about the efficacy

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23 Malcolm M. Feeley & D. Kelley, "Report on Client Specific Planning: A Project of the National Center on Institutions and Alternatives" (New Haven, Conn: Silbert, Feeley & Associates, April 1, 1983, mimeo - NCJRS), pp.46.

of Client Specific Planning as well as NCIA as an organization. As might be expected, public defenders felt that without a CSP plan, their clients would have been sentenced more harshly [63 percent, N=75]. These same attorneys also rated the work of NCIA very highly: 95 percent considered the work either excellent or good (N=68).[24]

Judges, on the other hand, were less impressed with the CSP plans, with 40 percent rating them "excellent" and 50 percent "fair." Nevertheless, 53 percent of the judges (N=72 cases) would have sentenced the client to a harsher sanction without the CSP plan. Overall, 85 percent of the judges rated the work of NCIA as good.[25] Surprisingly, 52 percent of the prosecutors also felt that the sentence would have been harsher in the absence of the CSP (N=33 interviews), and 67 percent felt NCIA's contribution was "adequate."

In analyzing compliance with those plans that had been accepted by the Courts, Feeley discovered major compliance problems. First, there was little follow-up by Probation, and none by NCIA (by program design, NCIA did not provide follow-up supervision at that time). About half of the Third-party monitors did not understand their roles; and in

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24 Ibid., p. 11.

25 Ibid., p.15,17,21.

a majority of the community service orders, no one was enforcing compliance.[26] In all, there appeared to be serious compliance problems in at least 52 percent of the cases examined.

This study was followed by Malcolm Feeley's colleague, Jonathan Silbert, Esq., who proceeded to study the implementation of client specific planning in Fayetteville, North Carolina.[27] At the time, NCIA had opened an affiliate office in Fayetteville under the auspices of the National Legal Aid and Defender Association (Washington,D.C.).

From January 1982 until November 1983, the Fayetteville office had developed 73 CSP proposals. The Project self-reported an acceptance/conditional acceptance rate of 81 percent. Using a similar methodology to its Washington study, Silbert only studied 33 accepted/conditionally accepted cases for 1982. Likewise, he found nearly identical results both in terms of the opinions of courtroom officers as well as defects in compliance. While there was fairly good compliance in restitution orders (71 percent positive), two thirds of the community service orders evidenced either no compliance or nominal compliance.

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26 Ibid., p.29-30, 34,37.

27 Jonathan E. Silbert, "Report on Client Specific Planning: A Study of the North Carolina Office of the National Center on Institutions and Alternatives" (New Haven, Conn: Silbert, Feeley & Assoc, November 21, 1983, mimeo), pp.25.

To quote Mr. Silbert: [28]

> *[I]f Client Specific Planning is to have a meaningful impact on sentencing practices and prison overcrowding, a mechanism that insures that the special terms and conditions of probation are being fulfilled must be implemented.*

Still, over 80 percent of the judges and public defenders considered the CSP "excellent," while there was greater resistance by Probation Officers -- only 33 percent rated CSP plans as excellent.

Yet another study looked at three NCIA satellite offices in West Palm Beach, Florida; Lincoln, Nebraska; and Fayetteville, North Carolina.[29] This study is interesting if only because it allows comparisons between three offices using the same Client Specific Planning model. Overall, the NLADA study tracked 110 CSP cases to final disposition for all three jurisdictions, combined.

In this study, judges granted probation orders with no incarceration, or adopted the CSP plan, in 61 percent (N=107) of the sample.[30] This rate varied from a high of 79 percent in Fayetteville to a low of 32 percent in Lincoln.

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28 Ibid., p.12,13 & 16 (quote).

29 Malcolm C. Young, "Alternative Sentencing/Sentencing Advocacy Project - 1982" (National Legal Aid & Defender Association: Washington, D.C., 1983, pp.43).

30 Ibid., p.15 .

Part of the reason for the greater success in Fayetteville was because judges were more receptive to the CSP plans, and defense attorneys liked to hold "contested" sentencing hearings, during which the CSP Case Developer and other witnesses testified in favor of the alternative.[31]

When a definition was used to identify "Prison bound" cases (serious offense with prior record), a total of 84 cases, or 76 percent were included in the sample (N=110). In about 54 percent (N=82) of these "prison bound" cases, the defendant either received a grant of probation or the CSP plan components. Without a control group, this was -- at best -- an approximate means of determining the extent to which the projects actually diverted probable prison cases.

Like the other evaluations noted above, there was a favorable response rate among public defenders, 71 percent (N=106) of whom felt that the CSP plan worked to their client's advantage at sentencing. Several of the attorneys noted an occasional late or inadequate plan, and many commented on the extra time necessary to confer with CSP Case Developers.[32]

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31 Ibid., pp.22-23.

32 Ibid., pp. 25,43.

e. Five Studies by the Sentencing Project

These next five studies, conducted between 1983 and 1988, were prepared by The Sentencing Project, a non-profit public advocacy group headquartered in Washington, D.C. (USA). None of these evaluations are carefully-controlled studies -- using control groups, sampling techniques, or advanced statistical analysis. Indeed, in nearly all of the sites under review, the Sentencing Project was also providing technical assistance; and each report reflects the tenor of a "management consultant's" study. As we shall see, however, several useful observations emerge even with these caveats.

Following upon an earlier case study of the Lincoln, Nebraska Center for Sentencing Alternatives,[33] staff from the Sentencing Project returned in 1984 to report on the progress of the Nebraska project.[34] This time, 35 cases were studied over a period from January 1983 to July 1984. Based on the criteria of the defendant having had a prior felony conviction, about 70 percent of the cases were considered "prison bound." Unlike other sites across North

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33 Malcolm C. Young, "Alternative Sentencing/Sentencing Advocacy Project - 1982" (National Legal Aid & Defender Association: Washington, D.C., 1983, pp.43).

34 Malcolm C. Young, "Evaluation of the Nebraska Center on Sentencing Alternatives" (Washington,DC: The Sentencing Project, July 1984), mimeo, pp. 37.

America, only 33 percent (10/30 cases) of the sentencing plans were accepted or partially accepted by the courts in Lincoln, Nebraska.[35] This low acceptance rate was attributed to a host of factors, chief among them:[36]

- *Local hostility to alternative sentencing. Community service sanctions & the use of third-party monitors are rare in Lincoln, Nebraska.*
- *The work of the Center is seen as a threat and duplication of Probation Department services by both the judiciary and the Probation agency.*
- *Un-even quality among Case Developers at the Center.*

In addition, the Nebraska Center suffered from an earlier incident in late 1982 in which a relatively new Case Developer spoke (with Defense attorney approval) to a rape victim concerning the possibility of restitution (a sanction which is permitted in Nebraska statute). Unfortunately, the victim decided to report the suggestion to a newspaper reporter as a possible bribe attempt, even though the Case Developer's plan included two years of incarceration in addition to alternative sanctions. The resulting furor badly hurt the credibility of the Nebraska Center.[37]

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35 Ibid., p.16 .

36 Ibid., p.12-13,18-19,27.

37 After this episode, many sentencing advocates adopted new rules for interviewing victims: chiefly, that such interviews must (1) have attorney approval, and (2) must either be tape-recorded or have a witness present. Many

Staff at the Sentencing Project felt that Nebraska illustrated a fundamental principle of sentencing advocacy: in the early years of any project, much liaison work needs to be done to "better define" the purpose of such a project. In the opinion of the Sentencing Project, such programs need to be seen as a necessary part of the adversarial process, which require the defense to provide advocacy services for their clients.[38] Indeed, defense-based sentencing advocacy should be seen as helpful to the Courts because it provides an early assessment of the defendant, has access to privileged information, and assists with placements and arrangements for restitution.

A year later, the Sentencing Project evaluated a sentencing unit located in New Haven, Connecticut.[39] This was a very small project with a 2-person staff, initially headquartered in the offices of the Connecticut Prison Society, but under contract to the state public defender. From July 1983 to December 1984, the New Haven project handled 46

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37 (continued)

sentencing units have also abandoned the use of part-time Case Developers in favor of full-time staff -- thereby facilitating better quality control.

38 See Standards for Criminal Justice, American Bar Association (Little, Brown & Co: 2nd Edit., 1986), Chapter 18, Standards 4-1.1, *et. seq.*

39 "Evaluation Report, Alternative Sentencing Program of the Office of the Public Defender, State of Connecticut" (Washington,D.C.: The Sentencing Project, January 1985, pp. 25.

cases to final disposition. In 34 or 76 percent of these cases, the Courts accepted or partially accepted the sentencing plan put forth by the Project.[40] A more detailed examination was then conducted of only 26 of the 34 successful cases. Like previous evaluations using this methodology, 81 percent (N=26) of the public defenders rated the sentencing work as either good or excellent. In 35 percent of these cases, the plan was adopted as a plea agreement with prosecutors, suggesting that "defense attorneys might do well to refer even more cases to prosecutors as early as possible."[41] Of interest, 62 percent (N=26) of these successful cases followed a contested sentencing hearing.[42]

Public defenders estimated that case preparation in the sample under study saved their clients about 1.9 years of prison time, or about $756,000 annually.[43]

The New Mexico State Public Defenders Office started using social workers to assist counsel during the early

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40 Ibid., p.6. As is common with many evaluations, there was no consultation with the actual court records; and no clear criteria as to what it means for a plan to be "partially" accepted.

41 Ibid., p.18.

42 Ibid., p.17.

43 Ibid., p.10. The source for the dollar estimate is not well-documented, and difficult to conceptualize because most prison costs are fixed, and only clearly emerge when new construction is contemplated, or an institution closed.

1970's, when the use of paralegals was part of an initiative by the U.S. Justice Department (LEAA). In 1984, the Office elected to create a more-focused alternative sentencing unit, involving 6 full-time staff in five different locations throughout the state. The Sentencing Project evaluated this unit, concentrating its study on 167 adult felony cases that had gone to disposition during the period 1985-1987, in three locations.[44]

During this start-up period, the unit demonstrated an acceptance/partial acceptance rate of 81 percent (N=166).[45] Ninety (90%) percent of those interviewed felt that the program resulted in less incarceration, and the evaluation produced an average savings of 4.5 months of time that would have actually been served in jail, for a total savings of $1.4 million dollars.[46]

Several operational problems were noted during this survey. They included the difficulty of getting community programs to interview detained clients; the lack of residential drug treatment space in the state of New Mexico; the absence of criteria (i.e., "prison bound") for attorneys

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44 "Advocacy in the Courts: An Evaluation of the Alternative Sentencing Program of the New Mexico Chief Public Defender" (Washington,D.C.: The Sentencing Project, August 1987, mimeo, pp.45).

45 Ibid., p.45. See note #40 above. Indeed, the evaluators found differences in the "case evaluation" forms used by staff at the different program sites.

46 Ibid., p.25,29. See note #43 above for comments about these estimates.

to make referrals to the unit; too many late referrals; Case Developers carrying too large a caseload; uncertainty about who (unit or Probation Department) would conduct follow-up; and inconsistent data for assessment purposes.

Yet another evaluation was conducted of a "client services" unit within the Wisconsin State Public Defenders Office.[47] Two of four offices were studied, located in the cities of Milwaukee and Madison. Of the 70 cases that were examined from 1987 to 1988, it was determined that 61 percent were either accepted or partially accepted by the Court. Over eighty percent of those interviewed felt that the sentencing plans were either good or excellent; and resulted in less prison time.[48] Despite the fact that the project had no formal screening mechanism to insure it was taking "prison-bound" cases, the Sentencing Project estimated that probably two thirds of the cases sampled were prison bound.

Public Defender lawyers were then interviewed concerning how much prison time they felt was saved as a result of advocacy services. Based on only cases considered to be prison-bound, this figure came to 35.2 years, for a gross

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47 "Evaluation Report: Alternative Sentencing Services of the Wisconsin State Public Defender's Office" (Washington,D.C.: The Sentencing Project, Marcn 1988, mimeo, pp. 29 & appendices).

48 Ibid., p.17-18, 22.

savings of $704,000.[49] Several recommendations resulted from this evaluation, including:

- *The case load was much too high, at 200 per Case Developer. National experience suggests it should be in the 20-60 case range;*
- *Referral guidelines should be established to reduce the "widening the net" phenomenon.*
- *Services could be concentrated on the parole violator who, without a plan, were likely to be re-incarcerated.*
- *Resource development was needed. In Madison, for instance, there were no programs for house arrest, community service, or social restitution.*

The final evaluation in this series was conducted at the request of the Ohio State Public Defender.[50] This project, up and running since 1986, involved only two case developers, one each in the counties of Montgomery and Lake. Both were former probation officers, which was of immense help when the program experienced "turf" conflict with the Probation Department. This conflict was successfully ameliorated because of personal alliances staff had made with former colleagues.[51]

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49 Ibid., pp.23-24.

50 "Public Defenders Aiding Corrections: An Assessment of the Ohio Sentencing Project" (Washington,DC: The Sentencing Project, October 1988, mimeo, pp.45 & appendices.)

51 Ibid., p.21.

Interviews with court personnel indicated that the sentencing plans were considered good to excellent by a sizable majority of those surveyed, and that they had reduced prison time. To give the reader an idea of the seriousness of the caseload, two thirds had a prior felony conviction; 45 percent had at least one prior prison term; one-third were probation violators at the time of sentence; and 83 percent were substance abusers.[52]

Overall, the evaluators reported that 65 percent (N=107) of cases closed to disposition had been either accepted or partially accepted by the Courts.[53] Of interest, the Case Developer in Lake County had a slightly higher acceptance rate (74 percent versus 64 percent) than her counterpart in Montgomery County -- a difference which was partly attributed to referral procedures. In Lake County, public defenders usually referred the case from 4 to 5 months in advance of disposition. In Montgomery county, by contrast, the Case Developer often only had two weeks to prepare a plan.[54]

The Sentencing Project estimated that some 71.6 years of actual prison time had been saved, costing about $802,000 in state expenditures. Nevertheless, there had been only

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52 Ibid., p.19.

53 Ibid., p.25.

54 Ibid., p.16.

minimal impact on the population of either local or state penal institutions.[55]

In conclusion, it was recommended that the project be expanded to other counties in Ohio, that a state-wide co-ordinator be appointed, in-service training be provided for staff, and a uniform data-reporting system be implemented.

f. Alternative Sentencing for Women

Included in this survey is an internal evaluation of a women's Client Specific Planning (CSP) unit operated by a non-profit agency called Social Justice for Women in Boston, Massachusetts.[56] This self-report is unique because it was the only study we found that is devoted exclusively to female cases; and because there was a 12-month follow-up of plan compliance.

The total sample includes all 65 CSP cases prepared from 1988 until 1990, with a 12-month followup of those cases closed by disposition. There can be little doubt that this sample is a seriously-delinquent population: 45 percent had 10 or more prior arrests; 43 percent had a prior prison term; over 90 percent were positive for chronic drug

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55 Ibid., p.33.

56 Marian Klausner & B. Smith, "Opening Doors for Change: Alternatives to Incarceration" (Boston, MA: Social Justice for Women, 1991), pp. 28 & appendix.

abuse; and at least 15 percent were HIV positive. The vast majority were from a high-recidivism population, including 32 percent accused of prostitution; 30 percent for theft, and 17 percent on drug-related charges.[57] Indeed, in 65 percent of the CSP plans, the Case Developer recommended residential drug placement.[58] Although there is no external audit of these statistics, the evaluation reported a 93 percent acceptance rate by the Boston courts.[59] Staff from the agency then looked at 47 of these successful case dispositions which had been closed as of December 31, 1989, and for which there was a 12-month follow-up.

Twenty-eight percent of this sub-sample (N=47) were in compliance with their CSP plans;[60] and only one person had been re-incarcerated for a period of 30 days or more in the 12-month period. Unfortunately, about 34 clients (72%) were in non-compliance with their plans; of whom 12 had been re-incarcerated. The combined re-incarceration rate amounted to 28 percent (13/47); a rate which is nearly identical to the re-incarceration rate for MCI-Framingham, the state's only prison for women (25 percent).[61]

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57 Ibid., p.9,11,& 16.

58 Ibid., See Appendix, p.4.

59 Ibid., p.18.

60 Ibid., p.19.

61 Ibid., p.5.

In conclusion, the report noted that women were more likely to fail drug treatment than men (50% vs. 38%) in the state of Massachusetts, and that there was still a dearth of good community programs for women offenders. As of 1990, Massachusetts spent approximately $20,000 per inmate to maintain in excess of 3,400 female inmates each year.

g. An early CSP study in New York State

In July of 1981, a Client Specific Planning project was inaugurated in Syracuse, New York, under the auspices of the National Center on Institutions and Alternatives (NCIA) and a private foundation. Called the New York Center on Sentencing Alternatives, the project employed five Case Developers and focused on providing sentencing advocacy to prison-bound cases.

Sometime in 1982, the State Division of Criminal Justice Services decided to conduct an evaluation of this fledgling project.[62] This study focused exclusively on those

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62 "An Evaluation of Client Specific Planning: An Alternative to Incarceration," (Albany,N.Y.: Office of Policy Analysis, Research, and Statistical Services; New York State Division of Criminal Justice Services, May 1984, pp. 96.

CSP cases which the New York Center conducted in Onondaga County, New York -- totaling only 31 cases from January 1981 to October 1982. An additional 58 cases were not studied because they involved other jurisdictions (Federal, state parole, other counties, Canada). The methodology included interviewing; the construction of a sample of non-CSP probation cases as a quasi-experimental control; and a statistical equation that predicted incarceration/probation outcomes from a sample of all felony case dispositions.

Referrals to the Project came exclusively from criminal defense attorneys, who were considered to be in the best position to know if their client might be imprisoned. Although this was an early example of defense-based advocacy, the evaluators criticized the Project for failing to cooperate with the Probation Department and failing to provide much social history data in the CSP work-ups. The researchers, who worked for the state criminal justice planning agency that funded many correctional agencies including probation, felt that Client Specific Planning was a duplication of Probation Department services.[63]

The evaluators did point to a very real implementation problem between the Project and the Probation Department. There was never any consideration of the additional burdens that CSP clients might place on the supervision caseload of

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63 Ibid., p.20-21.

the Probation Department. In many cases, supervising officers never even got a copy of the CSP plan; and were not contacted by any Case Developers from the Project for follow-up purposes.[64] Indeed, like many of the other early pilot projects, the Syracuse Center did not assume any responsibility for follow-up on those cases accepted by the Courts -- despite the fact that judges perceived this as a much-needed credibility mechanism.

The evaluators concluded that the CSP defendants looked like prison-bound cases when examining arrest charge, and also like probation-bound cases when prior record was evaluated.[65] Even with this ambiguous finding, the report later noted in interviews with judges and prosecutors that the Project selected cases that were "too serious."[66] Even so, the report documented an acceptance/conditional acceptance rate of 61 percent (19/31).

Based on a sample of all felony cases going to final disposition (N=1,649), two structural equations were constructed as a means to estimate sentencing outcomes. Using these equations, the report concluded that the 19 CSP cases, which had been accepted, were more similar to non-CSP pro-

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64 Ibid., p.25-28.

65 Ibid., p.34.

66 Ibid., p.69.

bated cases than prison-bound defendants; and therefore the Project had not truly reduced levels of incarceration.[67] There was no attempt to control for differences in the two samples, even with the use of a matching design as a quasi-experimental comparison group.

Even more speculative was the use of a sample of non-CSP probated offenders as a means to compare recidivism rates. Without clearly spelling out the follow-up period, the evaluators concluded that CSP defendants were more likely to be re-arrested on misdemeanors than the regular probation sample (21% vs. 16%); and more likely to be arrested for felonies (21% vs. 13%).[68] As Clements pointed out in his dissertation, this comparison was flawed because the regular probation sample was "most likely different from the 19 CSP cases. Moreover, no attempt was made to control for the selection of perceptually more serious cases by NCIA."[69]

Despite an essentially negative report, the evaluators concluded that the CSP model had potential to be a true alternative to state prison; but that the New York Center

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67 Ibid., p.38, 43,49.

68 Ibid., p.54.

69 William Harold Clements, "The Effectiveness of Client Specific Planning as an Alternative Sentence" (University of Delaware, Sociology, 1987: University Microfilms International Order No. 87-19523, Ann Arbor, Michigan). p.82.

had not implemented it properly -- i.e., Center staff showed a disinclination to work with the criminal justice establishment. Indeed, the report concluded that the Center was well-liked by all of the defense attorneys interviewed, and its plans were well-done and professional looking. It even found that the CSP plans were useful as a second opinion and that defense-based advocacy had a role to play in the sentencing process.[70] Despite opposition by unions representing probation officers, the New York Center continues to be funded by the State.

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70 New York State study, Op.Cit., pp. 55,58, 70-73.

h. Winnipeg, Manitoba - 1983 to 1988

In 1979, the Mennonite Central Committee of Manitoba began circulating a proposal to fund a Client Specific Planning project in Winnipeg. Starting in 1983, funding was secured from private and government sources to begin a project called "Alternative Sentence Planning." Training and casework replicated that of Dr. Jerome Miller and his staff at the National Center on Institutions and Alternatives (NCIA).

An adult project initially, intake criteria mandated that cases be facing at least three months confinement, and that criminal defense lawyers be the primary referral source. Later, the program was expanded to youthful offenders (ages 12-18) in 1985. Indeed, statistics indicated that of 250 referrals from October 1983 through July 1986,[71] only 69 percent (172/250) were accepted for workup. Most of the rejected cases were those considered not serious enough to mandate advocacy.

The project experienced a considerable amount of antagonism from both the Probation Department and Crown attorneys. Only after considerable negotiation with

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71 "Alternative Sentence Planning Adult Program Report" (Winnipeg, Manitoba: Children's Home of Winnipeg, mimeo, August 1986, unpublished). Statistical chart.

Probation officials was an accommodation reached. It was finally agreed that project staff would only recommend sentencing conditions that were readily enforceable. In return, the Department grudgingly recognized that the project was an extension of the Defense attorney's advocacy role. Nevertheless, the relationship was often a source of conflict:

> [O]ften information comes to light concerning an appropriate course of action. While Alternative Sentence Planners do try in all cases to make this information available to Probation officers, it is sometimes viewed as an attempt to discredit the Probation officer and to criticize the quality of their work.
>
> Consequently, on a number of occasions, Probation officers have recommended punitive and incarceratory sentences when the investigation by Alternative Sentence Planning has uncovered information that suggests an alternate approach that may be more treatment, corrective, or reparative in nature. [72]

Crown prosecutors were equally hostile, and on one occasion initiated a background investigation on the Director of the program in order to discredit him before the judiciary. In fact, two CSP sentences were appealed by the Crown, and both were upheld.[73] Notwithstanding, the project had good creditability among members of the judiciary; and

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72 "Alternative Sentence Planning - Youth Program: A Final Report" (Winnipeg, Manitoba: Children's Home of Winnipeg, April 1987 draft, unpublished). p.18.

73 Ibid., p. 22.

one provincial court judge was even referring cases.[74] From October 1983 to July 1986, 116 cases were completed to disposition. Of this number, 66 percent (77/116) were accepted or partially accepted by the Courts.[75]

While over eighty percent of the cases came from defense attorneys, a lot of work had to be done to encourage attorneys to make referrals. Case flow resembled a "boom or bust" cycle, and lawyers had to be constantly reminded as to the availability of the advocacy service.

Over the period of the project for which statistics are available, a much smaller number of juvenile cases were completed, with a lower acceptance rate compared to the adults [57 percent Juvenile (12/21) vs. 68 percent adult (65/95)].[76] Staff attributed these figures to the closer working relationship between juvenile probation officers and defense lawyers, causing case referrals to be much more "deep-end," and to recent changes in the Youth Offender Act

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74 "Alternative Sentence Planning - A Final Report" (Winnipeg, Manitoba: Children's Home of Winnipeg, October 1986, unpublished). p.16 .

75 "Alternative Sentence Planning Adult Program Report" (Winnipeg, Manitoba: Children's Home of Winnipeg, mimeo, August 1986, unpublished). Statistical chart. The remaining 56 cases (N=172) were either pending or withdrawn (case settled before report, referral provided but no report, client refused to cooperate).

76 Ibid.

which required a pre-disposition report any time custody was contemplated for a minor.[77] Still, the project was successful in over half of the juvenile cases, and pioneered efforts to obtain individualized, per-diem placements from the Ministry of Community Services for several of the youngsters.[78]

Ultimately, the project ended when the Federal Government declined to continue funding.

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77 Section 24.(2) of the Young Offenders Act, R.S.C. 1985, c.Y-1, requires, with rare exception, the consideration of a pre-disposition report when the Court is considering an order to custody.

78 "Alternative Sentence Planning - Youth Program: A Final Report" (Winnipeg, Manitoba: Children's Home of Winnipeg, April 1987 draft, unpublished). p.20.

i. North Carolina Community Penalties Act

Ironically, the state with the largest number of Client Specific Planning projects, and the most comprehensive evaluations of the model, is North Carolina (USA). Until recently, this state had one of the highest imprisonment rates in the United States [79] -- a fact which led to the creation of a citizens commission in 1980 that ultimately recommended legislation to create Client Specific Planning units throughout North Carolina's 34 judicial districts.

In 1983, the North Carolina legislature did something totally at odds with the burgeoning prison construction plans of other state governments. It passed a pilot program called the "Community Penalties Act" which was to fund the creation of CSP projects. The goal of each unit was to provide sentencing advocacy to jail-bound misdemeanant and felony offenders (chiefly property and drug). Violent felony offenders were, for the most part, excluded by statute. Each of the five initial projects selected for

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79 Excluding the District of Columbia, North Carolina had the second highest incarceration rate in 1977, behind South Carolina. **Prisoners in State and Federal Institutions on December 31, 1977** (Washington, D.C.: Superintendent of Documents, February 1979), p.4. In 1989, North Carolina has fallen to 21th place. **Correctional Populations in the United States, 1989** (Washington,D.C.: Bureau of Justice Statistics, Oct. 1991), p.67, Table 5.4.

funding was a non-profit corporation, for which the legislation mandated that it be operated by a Board of Directors selected from community leaders and criminal justice representatives (Probation, Prosecution, Public Defender, etc.).[80] The Department of Crime Control and Public Safety was selected as the administrative agency; and the legislation also required that each CSP project monitor the post-disposition impact of their caseload. When the projects first started, there was no explicit intake criteria for referrals except the opinion of public defenders that their client faced the likelihood of imprisonment. As a result, intake was restricted solely to attorney referrals; and in the early years, many of the projects suffered from too few cases.

The first program to come under research scrutiny was Repay, Inc., of Hickory, North Carolina.[81] Researchers from the Institute of Government, University of North Carolina (Chapel Hill) devised a randomized experiment. For those case referrals from March 1984 to June 1985, both a control (N=35) and experimental (N=36) group were created and then

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80 Marc Mauer, "The North Carolina Community Penalties Act: A Serious Approach to Diverting Offenders from Prison" **Federal Probation** 52 (March 1988): 11-17. No.1.

81 "Effectiveness of the Felony Alternative Sentencing Program in Hickory, North Carolina" (Chapel Hill, NC: Institute of Government, University of North Carolina, February, 1986, mimeo), pp. 21.

analyzed to determine the project's impact on sentencing. Despite randomization, the control group appeared to be slightly more serious; a larger proportion of the control group were detained for a longer pretrial period.[82] On the other hand, thirteen (13) cases in the experimental group actually received no CSP workup because either the attorney later declined the service, or the case was found to be statutorily ineligible.

Overall, 77 percent of the control group received a jail/state prison sentence as compared to only 31 percent of the experimental sample -- a finding which suggested that the project had reduced prison sentences. Indeed, the average sentence was less for the experimental group (21.0 months vs. 24.6 months), but not by much.

During this evaluation, the researchers had used a structural equation to estimate the likelihood that a felony defendant might receive a prison sentence of 12 months or more.[83] The resulting scale was later adopted by all the

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82 Ibid., p.8-10. Apparently, one of the indirect effects of the experiment was to encourage early guilty pleas among those cases selected for CSP services, thus reducing the period of pretrial detention for many defendants.

83 W. LeAnn Wallace & Stevens H. Clarke, "The Institute of Government's Prison Risk Scoresheet: A User's Manual" (Chapel Hill, NC: Institute of Government, University of North Carolina, April 1984). This regression equation was based on a sample of 1981 felony dispositions in twelve judicial districts. Four variables produced the greatest predictive accuracy: number of current charges pending; probation or parole status; number of days in pretrial detention; and number of previous convictions.

CSP projects as a means to identify prison-bound cases for intake. This also lead to a more proactive stance regarding intake; and now, many of the projects aggressively seek out cases after consulting grand jury indictment lists.

Greensboro, North Carolina was the next project studied; and in this instance, another randomized sample was selected. This time, the researchers persuaded project staff to calculate the defendant's Prediction Score in order to help select qualified cases. However, selection was still primarily guided by defense attorney opinion. Ultimately, the scale determined that 65 percent of intake was "high risk" (a risk score of at least 900 points, which translated into a general probability of 42 percent or more likelihood of serving a term of 12 months or more). Thirty-five percent (35%) were considered "low risk."[84]

Randomization eventually produced a control and experimental sample of 54 cases each. Both groups were comparable on most background factors, except that the experimental group was slightly more likely to go to prison, based on the Risk Prediction Scale; and there was some contamination in the Control group.[85] In at least 5 control

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84 "The Sentencing Alternatives Center in Guilford County, North Carolina: An Evaluation of its Effects on Prison Sentences" (Chapel Hill, NC: Institute of Government, University of North Carolina, March 1987), p.7-9.

85 Ibid., p.10, 30.

cases, defense attorneys prepared their own sentencing plans. In addition, CSP plans were eventually submitted in only 28 (52%) of the experimental cases. A large number of clients failed to contact their Case Developers; and some plans were not used by attorneys -- often because of communication problems with the counsel regarding court dates.

With respect to court outcomes, 68 percent (19/28) of submitted cases were accepted in full or part by the Courts. Interestingly, the number of hours spent per case correlated positively with acceptance rates.[86]

Looking at both samples, the median prison sentence between the Control and Experimental groups was dramatic -- 4 months incarceration for the Experimentals vis-a-vis 36 months for the Controls. Overall, however, the average (mean) differences were not as significant: 31.2 months for Controls and 25.9 months for Experimentals.[87] To a large extent, the absence of a much larger difference was because 10 of the Experimental caseload received extremely large sentences (5 yrs+), suggesting a "backlash" or "hydraulic" effect also observed by Clements.[88] Table 3 below illu-

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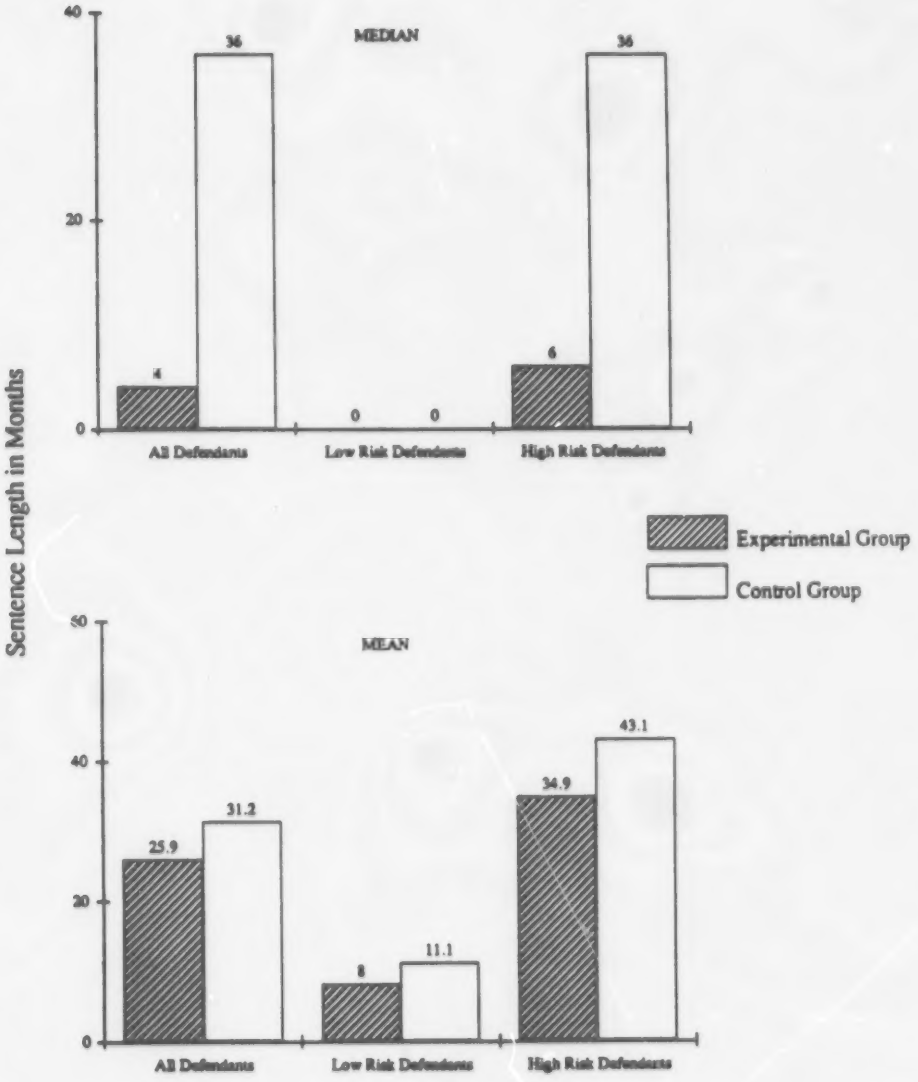
86 Ibid., p.17. For "low-risk" clients, the average was 13 hours; for "high-risk" it was 18 hours.

87 Ibid., pp.17,29.

88 William Harold Clements, "The Effectiveness of Client Specific Planning as an Alternative Sentence" (University of Delaware, Sociology, 1987: University Microfilms International Order No. 87-19523, Ann Arbor, Michigan). p.284,293.

Table 3

Median and Mean Sentence Length Between Experimental and Control Group



Source: Stevens H. Clarke & W. LeAnn Wallace, "Diversion from Prison by Sentence Planning: Evaluation of a Program in Greensboro, N.C." Justice System Journal 12 (1987) : 352 No. 3.

strates the differential affect among "high" and "low" risk defendants. Client Specific Planning made virtually no significant difference in reducing prison time among "low risk" clients. It was, however, much more effective in reducing incarceration levels among the "high risk" caseload.[89] As a result of this finding, the Prediction Score instrument is now in use by all CSP projects throughout the state. Thus, if commitment to State Prison is considered, the Greensboro project had a positive impact (63 percent of Controls sentenced to State Prison vs. 46 percent of Experimentals).[90] Nevertheless, it was the opinion of the evaluators that overall use of jail was not reduced as much as redistributed (i.e., shorter, local jail sentences).

The researchers looking at the Greensboro pilot project did note that little time was spent by program staff in follow-up monitoring. They recommended that better use be made of (1) community advocates; (2) every effort be made to file CSP plans with counsel at least 1 week prior to sentencing; (3) there was a need for better communication between counsel and Case Developers; (4) and that greater effort be made to "individualize" plans by adding more social history information and relevant placements.

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89 Greensboro study, Op.cit., p.20.

90 Stevens H. Clarke & W. LeAnn Wallace, "Diversion from Prison by Sentence-Planning: Evaluation of a Program in Greensboro, N.C." **Justice System Journal** 12 (1987): 350.

As to relations with the Probation Department, "turf" conflict was again noted. The researchers recommended that CSP cases be assigned to special Probation Officers who were positive about the program, and that communication be maintained.

In 1990, the Institute of Government issued another study of Client Specific Planning in North Carolina.[91] This time, the survey looked at data from twelve (12) different CSP programs across North Carolina. Data was collected from July 1987 to June 1988, and consisted of case reporting sheets forwarded by each agency to the Department of Public Safety and Crime Control. Hence, this data relied essentially on the CSP Case Developers to evaluate themselves. By this time, all of the programs were using the Risk Prediction instrument to select "high risk" cases for CSP preparation.

Ultimately, the study produced a sample of 336 Felony cases having reached a sentencing disposition. About eighty (79%) percent of the intake were "high risk" clients with Prediction scores in excess of 1000 points (more than 50 percent will receive a 12+ month prison sentence).[92]

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91 "North Carolina's Community Penalties Program: An Evaluation of Its Impact on Felony Sentencing in 1987-1988" (Chapel Hill, NC: Institute of Government, University of North Carolina, 1990), pp. 24.

92 Ibid., p.3,6.

Indeed, 21 percent of the sample had scores in excess of 2,500 points; and the average score for the entire sample was 1,931 points.

A exceptional ninety (90%) percent of the sample cases were accepted or partially accepted by the North Carolina Courts, producing an average of 19 prison months per fully accepted case versus 63 months for a rejected case.[93] For "high risk" defendants, 45 percent received no jail time and 70 percent received less than 12 months confinement.

The above study was followed up by yet another conducted by the North Carolina State Auditor.[94] The State Auditor examined 580 completed CSP plans submitted to court by 14 different programs in Fiscal Year 1989-1990. Field visits were conducted in almost all of the sites, and case files (not court files) were examined by the auditors.

According to the Auditor's report, 85 percent (494/580) of the CSP plans were accepted either in full or part,[95] for an average cost per plan of $2,189.00 (N=580). After finding that the programs were reducing imprisonment for those

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93 Ibid., p.11.

94 Performance Audit Report: North Carolina Department of Crime Control and Public Safety Community Penalties Program (Raleigh, NC: Office of the State Auditor, December 1990), pp. 66.

95 Ibid., p.10.

those defendants facing a substantial threat of incarceration, the State Auditor was critical of efforts by the Department of Crime Control and Public Safety to "de-stabilize" the entire Community Penalties program. Specifically, the report noted the following: [96]

> *Changing from a grant to a contract system and only funding each program for 11 months, instead of twelve. Money from the 12th month was to be used to purchase contract help at $300 per CSP case prepared.*
>
> *Prohibiting the preparation of CSP plans for high misdemeanor cases facing imprisonment, despite clear authorization in statute.*
>
> *The establishment of monthly caseload goals, and a new termination feature if the program failed to meet its goals for two consecutive months. Previously, the projects were evaluated annually.*
>
> *Dramatically increasing the caseload goals vis-a-vis the prior FY year.*
>
> *Requiring that any equipment purchased by the Projects with state funds become property of the Department of Crime Control and Public Safety. No such previous provision existed.*
>
> *Changing the "partial" acceptance criteria. In the past, defendants receiving a "split" sentence (some local time followed by special probation) were counted as "partial" acceptances. The Department proposed to eliminate this definition.*

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96 Ibid., pp. 20-24.

Indeed, this effort by the Department apparently began as early as the late 1980's, when in an earlier report, the State Auditor recommended that the Community Penalties program be transferred to a different state agency. As a result, many programs in late 1990 went without funding for a period of up to three (3) months and nearly folded.

Political pressure was brought to bear by the communities which supported each agency; and in 1991, the Legislature transferred the North Carolina Community Penalties Act to the Administrative Office of the Courts.[97] The new legislation also amended the original act to allow some violent crimes to be accepted for CSP preparation; and the appropriation was increased.

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97 September 17, 1991 letter from from Ms. Melvena Sams, Grants Administrator, Community Penalties Program, Administrative Office of the Courts, Raleigh, North Carolina. A copy of the new act can be found in Appendix B.

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j. Early Offender Rehabilitation Projects

As previously noted in Chapter 3, an early version of "Client Specific Planning" took the form of Offender Rehabilitation or Presentence Service units, headquartered in public defender agencies. Spearheaded by the National Legal Aid and Defender Association, small units staffed with "social workers" were funded in several of the larger agencies. For our purposes, we will examine three evaluations conducted in Washington, D.C.; San Jose, California; and New York City, New York.[98]

The origins of defense-based sentencing advocacy as a formal program date to the establishment of the Offender Rehabilitation Project for the Legal Aid Agency in Washington, D.C., circa April of 1964. Initially funded by the National Legal Aid and Defender Association, a small

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Anecdotal references from sites in Alaska; Memphis, Tennessee; and Seattle, Washington were excluded either because (1) the study was merely a description of the project or (2) incorporated a design that was methodologically deficient. See Jacqueline L. Bloom & J. D. Bloom, "Offender Counseling Services in a Public Defender Agency," **International Journal of Offender Therapy & Comparative Criminology** 23 (1979): 172-177, No.2.; Judy Barrasso, "Rehabilitative Planning Services in a Public Defender's Office," **Offender Rehabilitation** 2 (Winter 1977): 153-158, No. 2.; and "A View of the Pre-sentence Counseling Program of the Seattle-King County Public Defender Association" (Seattle, WA: King County Law & Justice Planning Office, Department of Budget and Program Planning, September 1984, NCJRS No. 25138).

staff of "social workers" were hired to assist Legal Aid attorneys with the preparation of "defendant studies" that would evaluate the Defendant and identify needed rehabilitation services.[99] At this time, the emphasis was decidedly on the side of psycho-social evaluation, not on recommending intermediate punishments such as community service, restitution, or intensive probation supervision. However, many of these early "CSP" plans did recommend work release, halfway houses, and drug treatment centers.

By April of 1966, the D.C. Legal Aid Agency managed to secure continued funding from the Institute of Criminal Law and Procedure, a research group within the Georgetown University Law School that was chiefly funded by the Ford Foundation. As luck would have it, the Institute was headed by Samuel Dash, later to become Chief Counsel of the Senate Watergate Committee, who was a distinguished Professor of Criminal Law. Under Dash, the Offender Rehabilitation Project expanded its staff to include: a Director, 2 Social Workers, 8 field investigators (most of whom were ex-offenders), clerical help, and later a psychologist and a psychiatrist.

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99 A. Kenneth Pye, "The Administration of Criminal Justice," 66 **Columbia Law Review** (1966): 286, 295-99; Richard J. Medalie, "The Offender Rehabilitation Project: A New Role for Defense Counsel at Pretrial and Sentencing," 56 **Georgetown Law Journal** 2 (Nov. 1967): 2-16.

With meager funding, Dash and his colleagues at the Institute conducted a preliminary evaluation of the Project from April 1966 to March 1967.[100] What they learned later set the stage for the most comprehensive evaluation of Client Specific Planning to date.

The re[illegible]y-expanded Offender Rehabilitation unit had no intake criteria -- it accepted all referrals as a matter of policy. During this period, the unit received 226 case referrals -- 88 of which received a complete "defendant study," including follow-up work. Most of the clients were poor, inner-city, Black males; one third had prior felony convictions, and 41 percent had been incarcerated before.[101]

When it became apparent to staff that much time was needed to secure housing and employment for clients, a new approach to intake was developed. Previously, legal aid attorneys had a tendency to delay a referral until some pre-trial negotiations had been completed. Sam Dash and his colleagues at the Institute encouraged another approach -- early referral beginning at the time of arraignment.

Looking solely at the 88 cases for which plans had been filed, the Courts accepted 77 percent (68/88) of the Pro-

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100 Samuel Dash, Richard J. Medalie, & Eugene L. Rhoden, Jr., "Demonstrating Rehabilitative Planning as a Defense Strategy," 54 Cornell Law Review (Feb. 1969): 408-436 No. 3.

101 Ibid.,

ject's recommendations.[102] The evaluators also learned that it was useful to have the Case Developer in court, even if he or she didn't always testify. In addition, the importance of resource development became obvious to everyone involved. Only 37 percent (N=154 agencies) of the community agencies in the Washington Metropolitan area had specific services for offenders.[103] Many agencies had so many restrictions on their intake or lengthy waiting lists, that it was pointless to make a referral to them. Indeed, gaining employment proved to be the single most difficult goal, and one which required protracted follow-up.

The evaluators did have a chance to compare the differences between official Probation reports and the Project's Defendant Studies.[104] Here are their conclusions:

> o *The Project saw clients much earlier in the criminal justice process; and had a closer relationship with its clients;*
>
> o *Project staff spent more time on each case, interviewing family, employers, etc.;*
>
> o *The Probation Department had much better information related to prior record, court processing, & previous probation history, etc.;*

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102 Ibid., pp.426-427. Two-thirds of the time, staff recommended a grant of probation; in the other cases, work release or incarceration was recommended. (p.422)

103 Ibid., p.428.

104 Ibid., p. 424.

- *Rehabilitation plans were rarely included within official probation reports; and*

- *Probation officers rarely used community resources to the extent Project staff used them.*

The above results led to further grant applications, and the most comprehensive evaluation of Client Specific Planning to date.[105] With funds provided by the Office of Economic Opportunity (OEO) and the U.S. Justice Department, the Offender Rehabilitation Project was expanded to a staff of 30 persons, including a director, three social work supervisors, case developers, field investigators, and clerical support.

The Institute looked at case referrals from September 1967 to November 1968; and this time, case selection was randomized among law school interns who were assigned legal aid defendants. Only adult offenders were eligible. Ultimately, an Experimental sample of 58 cases versus a Control sample of 67 cases was obtained.[106] Per design, those in the Experimental group were provided the full panoply of services from the Offender Rehabilitation Project, including a "Defendant Study," with the Case Developer in court and

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105 **Rehabilitative Planning Services for the Criminal Defense**, Institute of Criminal Law & Procedure, Georgetown University Law Center (Washington, DC: U.S. Government Printing Office, July 1970), pp. 210 & appendices.

106 Ibid., p.28,41.

follow-up services by field investigators. The median time for case investigation was about two months, which allowed more time for detailed case preparation. Although the samples were identical on most characteristics, Experimentals were involved in slightly more crimes of violence (41% v. 29%) than controls; had more previous juvenile arrests (2.5 v. 1.8), and less income.[107] All else considered, the Experimentals were slightly more disadvantaged than the Controls. Table 4 illustrates the results:[108]

TABLE 4

Disposition by Experimental and Control Group

Disposition	ORP Group	Comparison Group
Incarcerated	11 (20%)	29 (43%)
Average Time Served	9 Mons	25.6 Mons
Youth Act Sentence	6 (11%)	6 (9%)
Probation, Etc.	13 (24%)	17 (25%)
Not Convicted	24 (44%)	15 (22%)
TOTAL SAMPLE	54	67

107 Ibid., p. 29,45.

108 Ibid., p.52. The "Probation" category also includes work release, split sentence, Narcotic Act commitment, and those fined. Some of those "Not Convicted" were acquitted by reason of insanity.

Perhaps some of these results can be attributed to the "Hawthorne" effect, though the Offender Rehabilitation Project had been operating in the Courts for at least three years prior to taking this sample. Clearly, early intervention helped reduce the percentage of defendants who were incarcerated, reduced average time served when incarceration was imposed, and increased outright dismissals and insanity verdicts for defendants.

Both the Experimental and Control samples were examined for recidivism, the criteria being known re-arrests within the District of Columbia. Unfortunately, the follow-up period varied and was extremely short, with no statistical adjustment for time at risk in the community. It can be inferred, however, that Experimentals were at greater risk because more were living in the community, and for longer periods of time, than the Controls.[109]

Overall, 21 percent of the Experimentals (N=58) were re-arrested compared to 28 percent of the Controls (N=67).

The Institute evaluators ultimately interviewed 230 persons in the local criminal justice system, including thirty-one of the Experimental Defendants. As might be expected, 80 percent of the Defendants were favorable to the services provided by the Project, and the Defense Bar strongly supported the Unit. The judges were mildly suppor-

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109 Ibid., pp.55-58.

tive of the "defendant studies," although some stated that the Unit duplicated the work of the Probation Department, and did not follow-up with reports to the Court. The Chief Probation Officer felt the Project was a waste of time, and wanted the additional resources for his office. Likewise, many individual Probation Officers felt the work of the Offender Rehabilitation staff was "unrealistic," placed additional demands upon their workload, and was designed to "make them look bad."[110]

With respect to the internal operation of the Project, the bifurcation of staff into college-educated case developers (i.e., generally white females) and field investigators (most of whom were ex-offenders) created friction -- especially over salary allotments and overlapping job descriptions. The evaluation did prove, however, that ex-offenders could -- for the most part -- be effectively employed to help defendants; and that requiring masters degrees (i.e., MSW's, etc.) among casework staff was not necessary.

All Project staff received intensive training during the first start-up month, and found particularly useful presentations by community agencies concerning their services for offenders. Originally, staff members were assigned to develop their own "placements," but it later

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110 Ibid., pp.109,112, 119.

became evident that this information was not shared with other colleagues. Subsequently, a staff member was asked to devote one-half of her time to public relations and resource development. One of the more effective members of the staff was a seconded employee from the local Employment Office. He was extremely helpful in locating job training and employment for defendants.

In addition, the location of the Project's office caused some difficulty. It was originally ten (10) blocks away from the Courthouse, and eventually was moved adjacent to the D.C. Legal Aid Agency.

Relations with the Legal Aid attorneys were generally favorable. However, it was noted that members of the Defense Bar didn't always refer the case for services early enough.

> The attorneys often made little or no allowances for the time necessary to write a defendant study or for the complexities and subtleties of creating a rehabilitation plan. As a result, attorneys were sometimes in action before the Project could be effectively utilized. In some instances, plea negotiations were entered into before the Project could even make contact with the client. In other instances lawyers sometimes withheld information on clients (e.g., the defendants' criminal records) from Project workers because they feared it would hurt their chances for favorable Project recommendations. [111]

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111 Ibid., p. 164.

Overall, the Institute concluded that a social services unit was needed to enhance the legal mandate to provide competent and comprehensive services to those facing criminal charges. It specifically recommended that larger public defender agencies consider establishing such a unit, and made several implementation suggestions, including: (1) joint, in-service training with staff from the Probation Department; (2) staff exchange between the Probation Department and social services unit; (3) a full-time staff person devoted exclusively to resource development; and (4) continuous education of counsel regarding effective use of social service resources.[112]

As a result of research on the D.C. Offender Rehabilitation Project, similar units sprang up elsewhere in the United States. One pilot program was located in San Jose, California; and involved two, full-time case workers who were assigned only felony cases.[113] This one-year project (October 1969 - October 1970), is interesting if only because it documents numerous political problems that ultimately lead to the Project's demise. In fact, most of the statistical data was lost, making this evaluation a

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112 Ibid., pp.180-185.

113 Michael S. Wald, "The Use of Social Workers in a Public Defender Office -- An Evaluation of the Offender Rehabilitation Project of the Public Defender Office for Santa Clara County, California" (Rockville, MD: National Criminal Justice Reference Service, NCJRS No. 70138, February 1972, unpublished mimeo).

running "political" commentary on implementation obstacles.

During the first phase of the project, which lasted about 3 months, both Case Workers devoted themselves to researching the community for resources. Ultimately, they created a resource booklet identifying 92 agencies that might be available for placement purposes. In the remaining 9 months, a total of 86 CSP reports were prepared. All of the referrals came from Public Defenders who tried to pick cases that were jail or prison-bound.

Unfortunately, both the District Attorney and Probation Department opposed the submission of the written CSP reports to the Court; and Deputy Public Defenders had to resort to oral presentation of the social service studies. Later, the California Penal Code was specifically changed to allow submission of Defense-based sentencing reports.[114]

Project reports were quite different from most of the Probation presentence investigations. For one, Project CSP's usually recommended probation with treatment conditions; two, the CSP's had a more "social work flavor;" three, they contained more information about the Defendant's family and social problems (i.e., drug abuse); and four, the CSP's usually identified specific agencies willing to help manage the offender.[115]

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114 Ibid., p.23,27. See Calif. Penal Code Section 1204.

115 Ibid., p.36-39.

Many of these differences reflected an ideological preference by the Chief Probation Officer, who felt that psychological and social history information was largely irrelevant to sentencing. In his view, the most important information was the offense, prior record, and the attitude of the defendant.[116] For the most part, deputy probation officers didn't have the time to conduct a comprehensive evaluation of the defendant. Most had to prepare an average of 26 presentence reports a month. Nevertheless, the probation officers in the field were less hostile to the Project than the Chief Probation Officer.

By the time the Project came up for renewal by the County Board of Supervisors, even the judge who heard all of the cases and the head of the Probation Officer's union voiced support. However, both the District Attorney and the Chief Probation Officer mounted a successful campaign to discontinue funding and ultimately triumphed.[117]

In the end, the Project had a beneficial impact within the Public Defender's Office. There was a greater utilization of community agencies by attorneys, and a growing realization that sentencing advocacy could make a difference in the disposition of a case. Many agencies became more favorable to taking referrals from the Project,

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116 Ibid., pp.42-44.

117 Ibid., p.61.

but others still insisted on having clients come voluntarily to their office for services -- something that was impractical for those detained in jail, and unrealistic for others whose drug usage and family problems resulted in broken appointments.[118] In fact, most of the large publicly-funded agencies rejected many of the clients referred by the Project, preferring instead to work only with the "best motivated" (a phenomenon known as "creaming"). Smaller, non-profit agencies were more receptive. One technique which helped the Case Developers was their sponsorship of monthly luncheons designed to introduce community agencies to the Project.

Ultimately, Professor Michael Wald concluded that several problems prevented the Probation Department from effectively performing sentencing advocacy:[119]

- *The Probation Department's caseload was too high to permit the labor-intensive field work that was necessary to prepare a Client Specific Plan for sentencing;*
- *Most Defendants distrusted Probation Officers and saw them as an extension of law enforcement; and*
- *Innovation was not rewarded in the Probation Department.*

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118 For many chronic offenders, it is becoming increasingly clear that a "proactive" stance must be adopted. This means hiring detached workers to actively seek out clients, baby-sit them through intake interviews, and even transport them to placements (detox, housing, etc.)

119 Wald, Op. Cit, p.47.

Professor Wald would later speculate that "it may be that a degree of hostility is a sign of the success of such projects, for it indicates that the defense counsel is challenging the system in a meaningful fashion, thus hopefully improving the performance of all persons involved."[120]

In March of 1974, the Legal Aid Society of New York City started a "Presentence Service Group" within their Bronx and Brooklyn offices, modeled after the Offender Rehabilitation Project in Washington, D.C. Social workers and field investigators were hired to prepare presentence memoranda for Legal Aid attorneys.[121] Only felony cases were accepted, and unlike its counterpart in Washington, case workers usually had only six (6) weeks to complete their fieldwork and write a report. Usually, the Legal Aid Attorney only made a referral once the plea was entered, and sentencing was scheduled.

Evaluators from the Institute of Judicial Administration examined a sample of 55 Project cases, and then selected another 59 Legal Aid cases to act as a matched Control group (controlling for demographic background, prior record and instant offense). Overall, there was no

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120 Ibid., p.67.

121 "The Presentence Service Group of the Legal Aid Society: An Evaluation" (New York City, NY: Institute of Judicial Administration, February 15, 1975, mimeo), pp.123 & appendices.

significant difference between the proportion of each group that was sentenced to incarceration: 75 percent (44/59) in the Control sample versus 67 percent (37/55) in the Project group.[122] However, the Control group received 63 more years of maximum prison time, and 24 more years of minimum prison time than the Experimentals.[123] On this basis, researchers at the Institute recommended a more sophisticated follow-up study.

In the interim, the evaluators suggested that the Project hire a resource officer to locate agencies, and follow-up offenders who had obtained services. There was insufficient training for staff, and interviews with members of the judiciary noted that the effectiveness of the Project was directly related to the quality of Defense-based presentence memoranda. Conservative judges, for example, were offended by the "sociological" jargon in many of the reports, but often appreciated a detailed outline of a sentencing plan for the Defendant.[124] Still, one judge noted that in 1600 defendants he had seen in the previous year (1973), defense counsel had prepared sentencing memoranda in only two! Clearly, inauguration of the Project had made the Court more sensitive to the issue of defense-based

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122 Ibid., pp. Appendix C-16,17.

123 Prison sentences in New York State reflect a minimum and maximum range dictated by statute.

124 "The Presentence Service Group," Op.Cit., p.102.

sentencing advocacy. There was still some hostility by the Probation Department and a few conservative judges; and the researchers suggested a few program changes, including:

- *General orientation for all Probation officers;*
- *Periodic reports to Probation staff;*
- *Copy of the presentence memo should go to the Probation Department after each sentencing; and*
- *the Probation officer should be notified when Project staff is preparing a workup on a given case.* [125]

Overall, the researchers called for an expansion of the Project into other boroughs of New York City, with greater attention given to screening of referrals by Legal Aid attorneys. At the time, the Project accepted virtually all referrals from counsel.

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125 Ibid., pp.94-95. It must be emphasized that strategic concerns from Defense Counsel sometimes prevent this information-sharing from taking place prior to disposition.

k. Closing Juvenile Training Schools

Probably the most successful use of Client Specific Planning has been with the de-institutionalization of chronic juvenile delinquents from reform schools in North America. In this last section to Chapter 5, we will briefly review some of the better known experiments in closing juvenile training schools. We begin with the best known example -- the closing of the reform school system in the Commonwealth of Massachusetts.

The Massachusetts Experiment

A common precursor to many of these efforts is a long history of violence, corruption, mismanagement, suicide, homicide, and mistreatment of inmates in these juvenile institutions. In 1970, legislators in Massachusetts decided to pass a sweeping re-organization of their reform schools, which until then had operated as a political patronage system. Bucking tradition, they decided to hire a little-known professor of social work from Ohio State University named Jerome G. Miller, to become the new Commissioner of Youth Services.[126]

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126 See Jerome G. Miller, **Last One Over the Wall: The Massachusetts Experiment in Closing Reform Schools** (Columbus: Ohio State University Press, 1991).

Miller spent the first year of his tenure simply trying to improve the operation of the five existing institutions, including the 630-bed Lyman School for Boys -- then the oldest reformatory in the United States, having opened in 1846. The very size of these facilities, staff sabotage, and the allocation of well over 90 percent of the Department's budget to custodial expenditures soon convinced Miller that the reform school system was obsolete.

During the summer of 1972, while the Legislature was away on vacation, Miller suddenly closed the remaining facilities -- issuing contract-for-service agreements with a number of people and programs who were willing to supervise chronic juvenile delinquents. Some of the youths even stayed in dormitories at the University of Massachusetts while programs were being located for them.

> We circulated statewide a request for proposals to create alternative residential and nonresidential programs for reform school youth....The response was overwhelming. We were inundated with proposals from child care agencies, universities, art schools, YMCA's, private and religious charities, psychiatric and drug treatment programs...[127]

It was an especially chaotic time, because Miller had only scant funds to contract for community-based treatment. Several of the old training schools continued to operate

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127 Ibid., p.166.

with a full complement of staff and no inmates. With this fait accompli, only five percent of the 1,200 youth were now held in secure facilities. The Legislature was forced to act, freeing up the DYS institutional budget so that it could be re-allocated to community-based contractors. Miller was eventually forced from office by an angry Legislature, but his legacy still remains intact. Even today, the Commonwealth of Massachusetts has only 184 secure beds; over 80 percent of DYS youth are placed in small, staff-secure programs operated by private, non-profit agencies.[128]

Over the last two decades, there have been well over thirty articles and studies about the Massachusetts Experiment.[129] One early study by the Harvard Center for Criminal Justice concluded that while the overall recidivism for a 1969 sample of DYS youth had increased slightly; there were noticeable decreases in two regions of Massachusetts that displayed the best-run and most diverse community programs.[130] More recently, a study by the National Council

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128 Steve Lerner, **The Good News About Juvenile Justice** (San Francisco, CA: National Council on Crime & Delinquency, 1990), pp.21-39.

129 Miller, Op. Cit., pp.263-269.

130 Robert B. Coates, Alden D. Miller, and Lloyd E. Ohlin, **Diversity in a Youth Correctional System: Handling Delinquents in Massachusetts** (Cambridge, MA: Ballinger Press, 1978), Chapter 7, pp. 147-173.

on Crime and Delinquency tracked 800 DYS youths committed and released in 1984-1985.[131] Among the findings were the following:

- *The new community-based response to delinquent youth in Massachusetts did not result in a juvenile crime wave. Massachusetts continues to have one of the lowest rates of juvenile crime in the United States.*

- *There was a dramatic decline in re- arraignments for new offenses, post DYS intervention. This rate per youth actually decreased by about half, and applied both to violent and chronic offenders who were tracked for 24 months in the community.*

- *12 months after their commitment to DYS, about 51 percent of the youths were re-arraigned for new offenses, contrasted with 66 percent of youths released under the old reform school system.*

- *The number of DYS youth bound over to adult court has dropped from 129 in 1973 to 15 in 1986.*

- *While 35 percent of adult prisoners in Massachusetts had a prior DYS history in 1972, that rate has declined to 15 percent in 1985.*

According to Jerome Miller, now the President of the National Center on Institutions and Alternatives in Alexandria, Virginia; the key to the continued viability of

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131 Barry Krisberg, James Austin, & Patricia Steele, Unlocking Juvenile Corrections: Evaluating the Massachusetts Department of Youth Services (San Francisco, CA: NCCD, November, 1989).

the Massachusetts Experiment is the principle: "[E]very dollar attached to an inmate should follow that inmate into the community for at least as long as he or she would have been institutionalized."[132] Miller later became the Commissioner of Youth and Children in Pennsylvania, where he orchestrated another series of reforms.

The Camp Hill Project

The Camp Hill Penitentiary was Pennsylvania's maximum security facility for its "hard-core" delinquent youth. It housed about 392 males in the 1970's before a series of scandals -- which included a well-publicized suicide in 1975 -- led Governor Milton Shapp to seek its closure. Major pockets of resistance would later come from the state judges, public-employee unions, and members of the Legislature.

With the use of federal monies from the Office of Juvenile Justice and Delinquency Prevention, Miller and his staff issued a large contract to a brand new agency called the Center for Community Alternatives, Inc. In an effort to circumvent the lethargic state contracting system, the Center became the umbrella agency for agencies and individuals willing to contract with the state of Pennsylvania to manage juveniles offenders.

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132 Miller, Op.Cit., p.154.

Perhaps the mandate of the Center was simply overwhelming, but delays in opening several regional offices, a problem with funding, and unrealistic schedules for accomplishing treatment plan assessments led to conflict with juvenile court judges. Unlike other states which allowed classification staff at the reception center to designate youth to various programs, Pennsylvania gave judges complete authority to sentence to specific institutions and programs.

Private contracts were issued to develop individualized treatment plans for all of the offenders at Camp Hill and other institutions as well. In turn, these plans became "Client Specific Planning" proposals to be used by the judges to re-sentence youth already under the jurisdiction of the Commissioner of Youth and Children. Staff were also hired to prepare CSP's for new cases in the juvenile justice system.

In an assessment prepared of the Camp Hill project,[133] the judges indicated that they had previously committed chronic offenders to Camp Hill because no other suitable alternatives existed. Nevertheless, the judges disliked having CSP advocates in court, and criticized Commissioner Miller for failing to create enough secure jail space in lieu of Camp Hill. Indeed, during the construction of a new

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133 Daniel McGillis & R. Spangenberg, "The Camp Hill Project: An Assessment" (Cambridge, MA: Abt Associates, December 1976, NCJRS No. 61244), p. 63.

secure unit to house only a small number of youth, the judges "flooded" the facility to ensure its failure, and then publicized escapes and other implementation problems. Later on, the review committee designed to consult with the judges on the progress of the Camp Hill Project became a political vehicle for the judge's opposition to the Center and its work.

Despite all of these obstacles, the Camp Hill Penitentiary was successfully deinstitutionalized and closed -- partly aided by a ruling from the Attorney General of Pennsylvania who declared the facility contrary to the new state juvenile justice act. In the end, however, the Center for Community Alternatives was merged within a new state office for Youth Services and Correction Education.

Miller and his staff were not able to close all of Pennsylvania's large training schools, and his proposals for a complete de-institutionalization were eventually stymied in the Legislature. Nevertheless, the number of youth in Pennsylvania reform institutions dropped from 1,846 to 644 in the period 1977 to 1986, while placements in community-based agencies rose from 820 to 1,490.[134]

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134 Lerner, Op.Cit., p.41.

The Montrose School, Maryland

Like its counterparts in Pennsylvania and Massachusetts, the 250-bed Montrose School had been a juvenile reform institution since 1922. In the intervening years, numerous studies had been issued, criticizing the facility for mistreating and over-institutionalizing juvenile offenders. However, it took two suicides at Montrose to push Governor William Schaefer into action.

Working closely with the judges of the Maryland Court of Appeals as well as a core of influential state legislators, the new Secretary of the Department of Juvenile Services obtained a political consensus to close Montrose. She then issued a contract, ultimately awarded to the National Center on Institutions and Alternatives, Inc., to provide diagnostic and Client Specific Planning services to those youth at Montrose as well as at the Charles Hickey Training School located just outside the city of Baltimore. Importantly, most of the budget ($9 million) previously devoted to Montrose became available for community-based programs.

As part of the plan to ameliorate resistance from state correctional employees, a promise was extracted that no Montrose employee would lose his or her job. Several staff members took retirement, a golden parachute designed to encourage their early retirement, or elected to be retrained and transferred to another state agency.

The Montrose School was successfully closed in 1988, and in the intervening years, the average daily population in Maryland Training Schools has dropped from 728 in Fiscal Year 1985 to 206 inmates in FY 1990.[135] Recidivism data is sketchy, but internal data from NCIA's tracking system for 117 Montrose youth returned to the community suggests some positive impact. Over a period of 18 months, 22 percent have been recommitted to juvenile institutions or waived to adult court. Among a small sample of 75 Hickey reform School residents placed in the community with Client Specific Planning, 19 percent were recommitted or waived to adult court.[136] This compares favorably with previous rates from the old Montrose School era.

Nevertheless, closing the remaining Charles Hickey School has proved intractable. There have been reports that staff at the reform school "looked the other way" at escapes and disturbances at the facility, and then reported the problems immediately to friends in the state Legislature. In addition, union officials have lobbied hard to retain the school by claiming that youth under community supervision were not properly supervised and were maiming people. In fact, the Department has actually proposed building new secure beds on the grounds of the Hickey School under a current 10-year plan.

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135 Lerner, Op.Cit., p.75.

136 Ibid., p.89.

Utah Closes its Reformatory for Youth

Starting in 1975, several lawsuits were brought against Utah's 80-year-old reformatory, charging that wards were subject to violence by other inmates, mistreated, over-incarcerated, and lacked sound treatment programs.[137]

Faced with a class-action lawsuit, Governor Scott Matheson created a blue-ribbon task force to reform Utah's juvenile justice system. After hearing a presentation from Jerome Miller, the task force decided to replicate Miller's experiment with one unique variation.

In place of the 450-bed youth reformatory, the state of Utah decided to build three "secure" institutions with a total bed space for 70 delinquent youth. This meant that guidelines had to be created by the new Division of Youth Corrections for the placement of wards committed by the juvenile courts. Selling the old reformatory helped finance construction of the new secure facilities, and it also allowed the state to re-distribute the reformatory budget to community-based programs -- including group and foster homes, "trackers", drug treatment projects, and the like.

To help guide the judges in making commitment decisions, Utah created a Screening Committee composed of

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137 Ibid., p.94-96.

probation officers, DYC staff, court workers, and a representative from the Division of Family Services. Before a youth is sentenced, this Committee meets to provide the judge with a range of options, including a recommended disposition which is consistent with state guidelines on the incarceration of youthful offenders. Needless to say, most of these recommendations are for community-based programs. With viable options now available, the judges have been receptive.

On the other end of the system, a Board of Youth Corrections determines when an offender can be paroled from the system. Here, guidelines are also used to help "structure" decision-making so as to keep the secure facilities from being overcrowded; and conversely, the community-based programs from being under-utilized.

As to recidivism, a study by the National Council on Crime and Delinquency found that while large numbers of DYC youngsters continued to be arrested (53 to 81 percent), there is a sizable decline in the rate of offending.

> The 247 Youth Corrections offenders in the NCCD study accounted for 1,765 arrests in the 12 months previous to their commitment to the Division. Once released into the community, these same youth accounted for 593 new arrests -- a drop of nearly 66 percent compared to the pre-Youth Corrections period. [138]

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138 Ibid., p.108.

A similar internal study by the Division of Youth Services found that 95 percent of violent offenders remained violence-free for one year after leaving the jurisdiction of the agency.

* * * Epilogue * * *

In this chapter, we have examined a total of 26 evaluations of the Client Specific Planning model and its many permutations. It may now be appropriate to take a pause, and try to make sense of what we have learned. In the next and concluding chapter, we shall survey these findings and make some tentative observations about the CSP model and its future within the Criminal Justice system.

CHAPTER 6:
IMPLICATIONS FOR THE FUTURE

We began this study with the realization that Canada is contemplating major reforms to the Criminal Code, especially as it relates to sentencing and parole. Apparently, intermedi·te sanctions will be part of this agenda; albeit the history of alternative measures in Canada has been marked more by a failure of will and "widening the net." Commission after commission has endorsed the concept, only to find few political and economic resources available to implement alternatives to jails and penitentiaries.

It remains to be seen whether this stalemate can be influenced by research studies. Nevertheless, in this survey of Client Specific Planning, we have introduced the reader to a model of sentencing advocacy that has very ancient origins -- dating back to the first documented work of John Augustus, the founder of modern-day probation. If truth be told, Client Specific Planning is an attempt to replicate some concepts of aboriginal justice, based on a model of reparative justice.[1]

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1 See **Report of the Aboriginal Justice Inquiry of Manitoba: The Justice System and Aboriginal People** (Winnipeg, Manitoba: Queen's Printer, Province of Manitoba, 1991), Vol. I, Chapter 2, pp. 17-46; E. Adamson Hoebel **The Law of Primitive Man** (Cambridge, Mass: Harvard University Press, 1954).

a. Political de-stabilization

Probably the most significant finding for this survey of 27 Client Specific Planning studies is that "CSP" represents a paradigm shift, and is therefore especially vulnerable to political de-stabilization by traditional criminal justice institutions, including the courts and the Bar.[2]

In at least twelve of the 27 studies surveyed, there was clear evidence of destabilization by prosecutors, probation departments, Departments of Correction, legislators, Bar societies, and the like.[3] Some of these programs were simply shut down; others have had to struggle to exist. In over half of the studies, overt hostility -- usually of a "turf" nature -- was recorded, with probation departments being the most vocal in their opposition. Indeed, in our small survey of Sentencing Advocates, 63 percent (27/43) responded affirmatively to the question: "Have you or your agency encountered any political difficulties in performing sentencing advocacy?"[4]

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2 Thomas S. Kuhn, The Structure of Scientific Revolutions (Chicago, Ill: University of Chicago Press, 1970).

3 For purposes of calculation, I have included all of the North Carolina studies (4), Ottawa, Winnipeg, Los Angeles (RAND), Hawaii, San Jose (California), Massachusetts, Pennsylvania, and Maryland.

4 Please note that the small response rate of 18.6 percent to our survey of 231 practitioners makes this finding corroborative only.

An example of what a non-profit agency can face is provided by Ms. Selena J. Garr of the Buffalo Federation of Neighborhood Centers, Inc: [5]

> *From the inception of our program in August 1983, we have encountered major political difficulties primarily with the Erie County Probation Department and Erie County courts. As established institutions in the criminal justice system, these entities, particularly the probation department, deeply resented our sudden arrival with the system and did everything possible to sabotage our program. This resistance crystallized when the probation department realized that we were funded by the same state agency as they were -- the NYS Division of Probation and Correctional Alternatives around 1985, even though we had been giving probation officers copies of our plans from the program's beginning in which an accompanying cover letter clearly stated who our funding source was.*
>
> *From this point on, they began paying more attention to us and leveled a series of accusations against us dealing with specific programmatic issues when we started becoming involved in violation of probation cases, which they deeply resented. These accusations prompted a series of meetings involving our program staff, funding source, probation officers, union representatives, the United Way as well as a rigorous site visit and audit by the Division of Probation and Correctional Alternatives.... The most critical manifestation of this resistance has been what I suspect is the probation department's reluctance to enforce recommendations that we have developed for clients which have become conditions of their probation.*
>
> *Although after eight years of operation our program is tolerated and we have been able to develop a fairly cooperative working relationship with*

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[5] September 11, 1991 letter to the author by Selena J. Garr, Program Director, Client Specific Planning Services, Buffalo Federation of Neighborhood Centers, Inc., Buffalo, New York.

administrative staff within the probation department, this deep-rooted resentment to client specific planning and sentencing advocacy in general has made implementation of the model much more difficult and must less successful, in my opinion.

Part of this pattern of de-stabilization is a function of defense-based advocacy, which by definition originates in an adversary system of justice. Client Specific Planning originated in the private sector as an adjunct service to Defense Counsel -- primarily because traditional criminal justice agencies (corrections, probation, parole) have historically been unable to adopt a model of sentencing that is at odds with a prison-based system of corrections. Indeed, as we pointed out in Chapter 5, the Probation Department is ill-suited to administer such programs for a variety of reasons.[6]

b. The Paradox of Widening the Net

While some CSP programs have merely "widened the net" because of a failure to restrict intake to prison-bound offenders, others have succeeded in overcoming this problem by (1) targeting an institution for closure, or (2)

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6 cf. Chapter 5. see also John Pointing (ed.), **Alternatives to Custody** (Great Britain: Basil Blackwell, 1986). Probation officers have neither the mandate nor incentive to take on sentencing advocacy with the courts. (p.189).

restricting intake to serious offenders who demonstrate a high probability of being imprisoned.[7] Most innovative in this regard is the "point" system used by all of the CSP projects in the state of North Carolina. This scale, which was derived from sentencing research, enables staff to calculate the general probability of a client being imprisoned. Intake can then be restricted to only the most serious, prison-bound cases -- thereby diminishing the phenomemon of "widening the net."

Paradoxically, the more a CSP project restricts intake to only prison-bound defendants, the greater is the chance that it will experience political de-stabilization by established criminal justice agencies. We therefore have the hypothesis that:

> sentencing projects which attempt to divert offenders who would otherwise be incarcerated may, as a criterion of their impact, experience destabilization efforts on the part of established...[criminal]...justice agencies. [8]

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7 The Center for Community Justice in Elkhart, Indiana focuses on using CSP for sentence modifications of defendants already incarcerated. September 3, 1991 communication from Ruth Andrews, Center for Community Justice.

8 Matthew G. Yeager, "Barriers to Alternative Sentencing: A Case Study of Destabilization in the Private Sector" (Paper delivered at 1986 Annual Meeting of American Society of Criminology, Irvine, California, March 1, 1986, mimeo).

Based on this survey, there is ample evidence to support such a hypothesis. Indeed, Miller, Ohlin, and Coates report in their study of the deinstitutionalization of the Massachusetts reform schools that "all the fuss" was a necessary part of the process.[9] Those CSP projects which have survived over time had garnered sufficient political support to respond to the political backlash -- viz, Massachusetts, Utah, Maryland, and North Carolina. As we will see shortly, there are several techniques which can be used to ameliorate some of the predicted de-stabilization.

c. CSP Acceptance Rates

Not surprisingly, those projects which experienced the greatest success in having the CSP plans adopted were the various de-institutionalization studies in Massachusetts, Pennsylvania, Maryland, and Utah. When provided with political support and resources, Client Specific Planning is most effective when used to close a penal facility.

Less effective is the use of CSP as a general model of sentencing advocacy for serious offenders. Of the sixteen studies which report such statistics, a mean of seventy percent (70%) of all CSP's are accepted in full or in part

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9 Alden D. Miller, Lloyd E. Ohlin, & Robert B. Coates, A Theory of Social Reform (Cambridge, MA: Ballinger, 1977), p.229; see also John Pointing, Op. Cit., p.188 .

by the Courts.[10] This finding is in direct conflict with the widespread notion that sentencing judges are only influenced by the a) offense; b) prior record of the accused; and c) any mental health information. According to this assumption, the traditional presentence investigation report can be substantially reduced in scope (and man-hours needed to prepare it) because only a few pieces of information are relevant.[11]

Much to the contrary, this study has found that if sentencing judges are provided with a detailed social history of the defendant, including offense and mitigation information, and then presented with a "plan" for sanctioning in the community; they respond favorably. Two factors appear to be positively correlated with this acceptance rate: one, the number of hours it takes to prepare the CSP plan; and the use of mitigation hearings at the time of sentencing. Especially effective is the early use of Client Specific Planning prior to trial or entry of a plea.

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10 These sixteen studies include: Clements; RAND (Los Angeles); Silbert's NCIA study; NLADA study of NCIA; five studies by the Sentencing Project; Boston women's report; New York State evaluation; Winnipeg; Greensboro, North Carolina; North Carolina (1987-88); State Auditor report for North Carolina; and Offender Rehabilitation Project in Washington, D.C.

11 See Alvin W. Cohn & M. M. Ferriter, "The Presentence Investigation Report: An old Saw with New Teeth" Federal Probation 54 (September 1990): 15-25.

d. Impact on Imprisonment

The most successful use of Client Specific Planning to reduce rates of imprisonment has been the deinstitutionalization studies, where the model was used to close facilities.

Only seven of the 27 studies under consideration employed the use of a Control group for comparison purposes.[12] When the CSP group was compared to the Control group along the variable "percent incarcerated/imprisoned", four of the studies showed a positive result for the CSP sample. In other words, offenders receiving a Client Specific Plan were less likely to be imprisoned. It is interesting that all four of these studies used a "random" as opposed to a matched design -- suggesting that studies using a matched design may be less able to discern impact because of sampling error.

However, two of the other studies (Ottawa & New York Legal Aid) which reported no difference along this dimension did conclude that the average jail sentence was less for CSP defendants vis-a-vis the control group. Only the Clements' study provided a negative result, showing no difference along either dimension.

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12 These studies are: Ottawa (matched design); Clements (matched); RAND (random); Hickory, N.C. (random); Greensboro, N.C. (random); Offender Rehabilitation Project, D.C. (random); and New York Legal Aid (matched).

e. Recidivism

Only eight of the 27 studies reported any recidivism data, and in only one (New York State) did the CSP sample do worse on recidivism than a control sample. As we have pointed out previously in Chapter 5, the sampling technique in the New York State report is probably defective, and the results should therefore be interpreted accordingly.

For the most part, there was no significant difference in recidivism outcome comparing CSP and control samples. Only in Massachusetts and Utah was there evidence that deinstitutionalization, through the use of CSP planning, has produced a lower recidivism rate. In both cases, we have very long follow-up periods combined with a massive transfer of institutional budgets to community-based programs. Consequently, it may be the transfer of resources which becomes the crucial variable in recidivism reduction, not the Client Specific Planning model.

The data are consistent with the long-established view that "efforts to rehabilitate the offender in the community... are at least as successful, or more successful, than" the use of imprisonment.[13]

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13 **Rehabilitative Planning Services for the Criminal Defense**, Institute of Criminal Law & Procedure, Georgetown University Law Center (Washington, DC: U.S. Government Printing Office, July 1970), p.173 & 210; Harry E. Allen, C. Eskridge, E. Latessa & Gennaro Vito **Probation and Parole in America** (New York: Free Press, 1985),pp.257-259; Belinda McCarthy & Bernard McCarthy, **Community-Based Corrections**

f. Costs

We did not pay as much attention to the per capita costs of the Client Specific Planning model inasmuch as this author lacks the expertise to evaluate economic costs. Further, many of the cost estimates are based on conflicting assumptions.

However, if we examine data in the performance audit by the North Carolina State Auditor, we learn that the average cost of a CSP plan in North Carolina was approximately $2,189.00 (US).[14] By almost any estimate, that is well under the per capita costs of imprisonment in North America. For instance, the average daily cost to house an inmate in a Canadian federal institution during FY 1990-1991 was $138.00 (CDN).[15] This translates to an average annual cost of $50,370 (CDN) per inmate.

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13 (continued)

(Monterey, Calif: Brooks/Cole Pub., 1984), p.117; Stephen Doeren & Mary Hagemen, Community Corrections (Cincinnati, Ohio: Anderson Publishing Co., 1982), p.79; Joan Petersilia, S. Turner & J. Peterson Prison versus Probation in California -- Implications for Crime and Offender Recidivism (Santa Monica, CA: RAND Corp., 1986), pp.77.

14 Performance Audit Report: North Carolina Department of Crime Control and Public Safety Community Penalties Program (Raleigh, NC: Office of the State Auditor, December 1990), pp. 10. Total budget for FY 89-90 was $1,269,376; number of completed CSP plans totaled 580.

15 Adult Correctional Services in Canada - 1990-91 (Ottawa: Minister of Supply & Services Canada, 1991), p.87.

Standing alone, Client Specific Planning programs will increase the per client costs of public defender or legal aid systems. However, the proper cost-effectiveness comparison is with per capita correctional budgets. If theoretically speaking, a prison-bound inmate is diverted from the penitentiary through CSP, then a portion of the institutional budget that would have normally been spent on his or her imprisonment should be credited to Client Specific Planning.

Unfortunately, the criminal justice system does not operate in such a manner to reward CSP programs through institutional budget diversion. Hence, the prevailing system operates to discourage the widespread adoption of Client Specific Planning because there is no reimbursement for higher per capita costs.

It remains to be seen whether a subsidy could be entertained t compensate judicial districts and Provincial probation offices for implementing a local CSP program.[16]

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16 R. L. Smith, "Quiet Revolution Revisited" **Crime & Delinquency** 32 (Jan. 1986): 97-133; K. S. Griffiths, "Natural History of a De-Institutionalization Program -- The California Subsidy Experiment" in M. Brusten, et.al (eds) **Youth and Crime, Social Control and Prevention** (1984), pp.47-52; A.T. Williams, "Economic Analysis and Evaluation of California's Probation Subsidy Program -- A Case Study of a Performance Grant-in-aid Program" (Ann Arbor, Michigan: University Microfilms International, 1974), pp. 293; F. Feeney, T. Hirschi & E. Lemert, "Evaluation of the California Probation Subsidy Program - Summary" Vol. 6 (Washington,D.C.: National Institute of Law Enforcement and Criminal Justice, Dept. of Justice, 1975),pp. 66.

g. Implementation Issues

The first lesson to be learned from our survey of the evaluation literature is that sentencing advocacy needs to be defined as part of the adversary system. Deliberately introducing conflict into the system should be seen as healthy, and a much needed corrective to the imprisonment of ever greater numbers of offenders. Consequently, when a CSP project is introduced to a local criminal justice system, it needs to be clearly defined, with all parties having an understanding that some conflict will ensue.

Second, the more successful CSP projects have had a discrete target. Closing specific penal institutions has been the most successful use of Client Specific Planning. Alternatively, de-populating a dangerously overcrowded institution could be a goal. Using "pretrial" detention status as a filter for CSP eligibility could be considered among other intake criteria. Finally, the more general use of sentencing advocacy has also been shown to have positive effects -- though less impressive than the de-institutionalization of targeted penal facilities.

During the start-up of a CSP project, much attention should be focused on training and resource identification. It is important that the community be thoroughly researched to identify "placements" prior to accepting cases; and that staff be trained in Client Specific Planning. Fortunately, several well-developed training modules already exist for

CSP training, and are readily available.[17]

In this vein, it might be useful to offer CSP training to several members of the Probation Department -- so that they could better understand the technique and might later be less resistant to its implementation. Likewise, assigning CSP cases to some of these trained officers for supervision might lessen the hostility.

It is also clear that the use of seconded personnel from other agencies, including from the Probation Department, is a useful technique both to ameliorate tensions, enhance credibility, and increase productivity. A job placement officer from a local employment program has been found immensely useful; and one member of the Project's staff should be a full-time resource development officer.

At the present time, the Provinces spend approximately $1,212.00 (CDN) per year to supervise a probationer or parolee in the community.[18] If CSP cases translate into a greater workload for the Probation Department, then administrators may wish to consider a subsidy to the Probation

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17 The best-known are offered by The Sentencing Project in Washington, D.C. (USA); and the National Center on Institutions and Alternatives in Alexandria, Virginia (USA).

18 **Adult Correctional Services in Canada - 1990-91** (Ottawa: Minister of Supply & Services Canada, 1991), p.74 & 121. This figure is based on 85,618 offenders under community supervision in FY 90-91, at a cost of $ 103,733,000.

Department in order to compensate staff and allow them to purchase services for offenders on their caseload. Further, there is no reason why a probation or parole office could not create their own specialized CSP unit, assuming measures were taken to protect the unit's independence and greatly-reduced caseload.

Any administrator selected to direct a CSP project must devote at least half -- perhaps more -- of his or her time to liaison work with Crown attorneys, judges, correctional staff, probation officers, public, and members of the Defense Bar. For that reason, it might be a good idea to select such an Administrator from the senior echelons of the Defense bar, Clerk of the Court, or even a well-respected member of the Crown attorneys office. Additional duties would include budget preparation, personnel support, and progress reports to judicial officers.

While this may be a contentious issue among certain offender-oriented agencies, it has become clear that judges expect some follow-up data on CSP cases in order to justify their continued use of Client Specific Planning. This means that a CSP Unit must establish a "tracking" system to follow the status of each case, and periodically update that data. Tracking is also effective in identifying those offenders who need "patchwork" done to their CSP plans. It is not uncommon -- especially in juvenile work -- for there to be needed changes to a CSP plan; otherwise an offender is exposed to a likely probation violation.

Most of the CSP Case Developers should probably be full-time staff. One or more supervising Case Developers should be hired to maintain quality control, and generally oversee casework. Referral sources -- such as the Defense Bar -- should be educated on the benefits of early referral and the use of a mitigation hearing at sentencing with the Case Developer available in Court.

Case selection should be restricted only to prison-bound cases. The use of a prediction scale, generated from a sample of criminal case, might be a useful tool in this regard as well as the Crown attorney's recommendation, the pretrial detention status of the defendant, and the Probation Department recommendation. Clearly, if the client is detained and both the Crown attorney and Probation officer are recommending imprisonment, this is an offender in dire need of Client Specific Planning.

Though it might seem mundane, the location of the Project's office is important for day-to-day operations. Ideally, a CSP unit should have an office directly inside the targeted penal institution or courthouse -- so that it can easily access its clientele. This reduces turn-around time, allows Case developers better access to courtrooms, and facilitates intake referrals from members of the Defense Bar.

Finally, some funding source should be conducting research on Client Specific Planning, preferably using randomized designs. As previously noted, only seven of the

27 studies under review employed the use of a Control group. Given the millions of dollars spent to maintain prisons, there really is no justification for a paucity of good research designs. If the public is ever going to be convinced of the merits of alternative measures, these programs need to be constantly evaluated, with allowances made for experimentation and some probability of failure.

h. Dangers of Criminal Justice Reform

In closing, I am reminded of Eugene Doleschal's now classic article titled, "The Dangers of Criminal Justice Reform."[19] Most of the so-called reforms designed to divert offenders and promote alternatives to incarceration have merely "widened the net" of social control while allowing prisons to continue unabated. In designing a reform, administrators need to be sensitive to the "system's" ability to dilute, co-opt, re-direct, resist, and destabilize a new project. We are now learning this lesson with respect to the enactment of determinate sentencing laws in the United States, that have resulted in larger prison populations serving longer sentences.

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19 Eugene Doleschal, "The Dangers of Criminal Justice Reform" Criminal Justice Abstracts 14 (March 1982): 133-152, No.1.

If we truly wish to protect our communities from victimization, perhaps we should pay some attention to the needs of offenders. According to several sources, offenders want services that are specific to their problems, individualized, and for which they can provide some limited feedback in terms of participation.[20] These problems include drug addiction, joblessness, substandard educational skills, lack of self-esteem, and various family problems. For creative ideas, take note of a recent interview of Ms. Barbara J. Sabol, Commissioner of New York City's Human Resources Administration, which handles welfare, foster care, and shelters for the poor: [21]

> *Q. You have started a program to keep the children of families in crisis from entering foster care. What are you hoping to accomplish with family preservation?*
>
> *A. We're hoping that families can stay together and that children will be safe in those families and that the families will get the kind of support they need to solve the problem that led to the report of suspected child abuse and neglect. As a country we know that children grow and thrive better in families.*

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20 See Edna Erez, "Rehabilitation in Justice: The Prisoner's Perspective," **Journal of Offender Counseling, Services, and Rehabilitation** 11 (Spring-Summer 1987): 5-19, No.2; Jonathan D. Casper, **Criminal Justice -- The Consumer's Perspective** (Washington,D.C.: National Institute of Law Enforcement and Criminal Justice, U.S. Department of Justice, February 1972).

21 "Life at the Top of New York's Welfare Bureaucracy," **New York Times** 8 December 1991, p.E18.

We'll use intensive case management. The caseworker will work with two families for six to eight weeks. They will have a small amount of cash to meet emergency needs of families. And they have got to spend 20 hours a week in the home with the family. So it's real problem solving....

Q. You've applied the same philosophy to women who use drugs. How is that policy working?

A. The family rehabilitation program is used in cases of suspected child abuse and neglect when substance abuse is a factor. The mother is told, "You either go into drug treatment or we will have to remove your child." If the mother says yes, then we link her with a drug treatment program and services -- counseling, day care, parent education, conflict resolution -- designed to allow this woman to continue to care for her children.

Client Specific Planning is but one technique designed to help manage Society's failures. It is not a panacea, nor a cure-all. Conversely, this survey of the CSP model has shown that the public, its elected representatives, and those working in the criminal justice system can ill-afford to ignore the lessons from a truly-individualized model of justice.

--- The End ---

Appendix A

November 24, 1989

The Honorable Judge Claude Nielson
Circuit Judge, 17th Judicial District
Linden, Alabama

Dear Judge Nielson:

This is a community-based sentencing proposal prepared by Western Carolinians for Criminal Justice for Mr. [redacted] Sr. The case was referred for our consideration by Mr. [redacted] attorney, Mr. W.W. Dinning, Jr. This case is but part of an experimental pilot program operated under the auspices of the National Sentencing Project of Washington, D.C. and the Bar Association of the 17th Judicial District of Alabama. The project is made possible by a grant from the Edna McConnell Clark Foundation.

The components of this sentencing proposal for Mr. [redacted] are based upon the experience of this writer, in Alternative Sentencing, and his examination of this case, e.g., interviews with the defendant, the defendant's employer, certain members of his family, his attorney, and a survey of available community resources. With this proposal the overall objective is to provide the Court with background information about Mr. [redacted] which helps clarify his criminal act, and to identify and recommend appropriate Community-Based sanctions that are available so Mr. [redacted] can be punished in the community in a fashion that will minimize the possibility of future criminal acts.

Components of this plan address:

(1)	Restitution Payments	(6)	Breathalizer/Drug Screens
(2)	Alcohol Restrictions	(7)	Employment
(3)	Driving Priviledges	(8)	Firearms
(4)	Community Service	(9)	Searches
(5)	Victim Contact	(10)	Fines, Cost of Court and Attorney Fees

Thank you for giving this program your consideration. Should you have any questions about this proposal, the preparer will be available to you in Court.

Sincerely,

Grady L. Wacaster

SOCIAL HISTORY

Mr. [redacted] is a 37 year old unmarried black male resident of Faunsdale, Alabama. He is employed by Mr. George McKee as a milker at Mr. McKee's Dairy. He worked previously primarily for dairyman, Mr. Lester Crawford, as a milker for approximately fifteen (15) years. His work was described to this writer as being good. He was further described as being a dependable, reliable, knowledgeable, and valuable employee. (Letters attached)

Mr. [redacted] attended the third grade in school and can neither read nor write. He appears to be of average intelligence.

Mr. [redacted] and the victim resided together for more than thirty (30) years and eleven (11) children were born and reared during that relationship. Mr. [redacted] claims he and the victim were married during that period; the victim disputes this: she states that they were never married. The victim is now married to another man and resides with him in a house owned by her spouse.

Mr. [redacted] lives alone in a one-room house in Faunsdale. The house has no electrical service and Mr. [redacted] cooks and heats the house with wood. His rent is fifteen dollars ($15.00) per month- his landlord lives directly across the road from him, approximately some fifty (50) feet away.

CRIMINAL HISTORY

During the past twenty-two years, other than the current charge, Mr. [redacted] has been arrested a total of 18 times on misdemeanor charges. (See attached Probation Officers Report) All of these charges dealt with; 1) automobiles, 2) alcohol, 3) possession of a weapon and 4) one minor assault charge.

This writer has given considerable consideration to the above pattern of behavior and is confident that this plan has the necessary components to successfully alter that behavior pattern.

CURRENT CRIME

The details of the crime of attempted murder in this instance are well known to the court and are also briefly described in the attached probation report. The seriousness of the injuries to the victim of this crime cannot possibly be over emphasized. The pain and suffering of the victim can never be atoned for. The necessity for substantial punishment in this case is undeniable. With the aforementioned fully in mind, the Court is respectfully requested to entertain the following facts: 1) Mr. [redacted] was intoxicated, 2) He was on the premises of the victim, 3) He was in possession of a firearm. These three elements of this crime are specifically addressed by this punishment proposal plus others. The proposed restitution to the victim cannot in any fashion compensate for her damages- neither can the imprisonment of the offender. (Cont.)

CURRENT CRIME (cont.)

Imprisonment of the offender will prevent his having possession of a firearm- so does this proposal. Imprisonment ensures that the offender will not be upon the premises of the victim- so does this proposal. Imprisonment does not guarantee that the offender will not have access to alcohol- neither does this program.

PROPOSED COMMUNITY SANCTIONS

(1) RESTITUTION - Mr. [redacted] is to have withheld from his earnings one hundred dollars ($100.00) per month by his employer, Mr. George McKee, and deposited with the Clerk of Court to be forwarded to the victim in this matter. Such payments are to be made for a period of five (5) years.

(2) ALCOHOL RESTRICTIONS - Mr. [redacted] is to consume no alcoholic beverages at any place other than on his own premises. He is not to appear in an inebriated condition in any public place.

(3) DRIVING PRIVILEGES - Mr. [redacted] is not to be in possession of any motorized vehicle for the duration of his probation.

(4) COMMUNITY SERVICE - Mr. [redacted] is to perform one hundred (100) hours of community service under the supervision of Mr. Harless, Mayor of Faunsdale, Alabama.

(5) VICTIM CONTACT - The defendant is forbidden to go on or about the premises of the victim or her current spouse, nor is he to make any effort or attempt to contact either or them in any manner.

(6) BREATHALIZER AND/OR DRUG SCREENS - When in any public place, other than in his own residence, Mr. [redacted] is to submit voluntarily to any breathalizer test or other medically accepted drug screen when requested by any Law Enfrocement Officer, his Probation Officer, Community Service Supervisor, or his Employer.

(7) EMPLOYMENT - Mr. [redacted] must remain gainfully employed during his probationary period. Should he be dismissed by his employer for misconduct or failure to report for work in a timely manner and to perform his duties properly while at work, this will serve as grounds for revocation of his probationary status.

(8) FIREARMS - Mr. [redacted] is not to have on his person nor upon his premises any firearm of any type, nor is he to allow anyone, other than someone duly authorized by law, to come upon his premises with a firearm of any type or description.

(9) SEARCHES - Mr. [redacted] is to submit himself and/or his premises to a warrantless search at the request of his Probation Officer for verification that Item #8 is being complied with.

(10) FINES, COST OF COURT & ATTORNEY FEES - Mr. [redacted] is to pay the Court any and all fines and costs associated with this action, including Community Service Supervision Fee, Probation Supervision Fee and Attorney Fees. (Cont.)

NOTE: The Aforementioned Sanctions are special conditions of probation, and all other standard conditons of probation also apply.

RATIONALE FOR ALTERNATIVES:

As briefly noted above, victim and community safety are adequately and comparably addressed either by incarceration or by this alternative proposal; there are, however, some major differences: 1) The costs of incarceration and scarcity of prison beds is a serious issue. 2) The recidivision rate for committing the same or similar type crime by those incarcerated is 66% within 3 years of their release from prison - conversely only 20% of alternative sentences are revoked and less than 2% of those are for new crimes. (The other revocations are for technical violations, failure to complete community service, pay fines as ordered, etc.)

The major strength of this proposal lies in the manner in which the principals of the components of the plan are intertwined. The defendant's employer has volunteered to assure that all restitution payments are made. The Chief of the Volunteer Fire Department of Faunsdale, (Mr. Harris), is also an employee of Mr. McKee and the fire department is in need of some Community Service. The mayor, Mr. Harless, also supervises state prisoners and is well aware of the seriousness of Mr. [redacted] crime and is personally acquainted with Mr. Harris and Mr. Mckee. All three of these gentlemen either are already aware of Mr. [redacted] responsibilities or will be made fully aware of them by having access to this report. By being almost in daily contact with the Fire Chief, his employer and the mayor, Mr. [redacted] will be supervised by responsible individuals more fully aware of his circumstances than would be the case were he incarcerated. The focus of this supervision will be on seeing that Mr. [redacted] complies with his Court ordered duties; the focus of imprisonment would be on merely assuring Mr. [redacted] presence.

CONCLUSION:

This alternative proposal is presented to the Court with these specific major objectives in mind:

(1) This plan is punitive.
(2) Adequate provision for the safety of the victim and the community-at-large is provided for.
(3) This alternative sentence is without cost to the citizens of Alabama.
(4) Benefits of this alternative proposal over incarceration, extend beyond the evident monetary advantages; the rate of recidivism differences the two approaches to punishment offer is also of significance.

ATTACHMENTS:
Probation Officers Report
Letter from Mr. Lester Crawford
Letter from George McKee

Appendix B

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION
RATIFIED BILL

CHAPTER 566
SENATE BILL 465

AN ACT TO TRANSFER THE COMMUNITY PENALTIES PROGRAM FROM THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO THE ADMINISTRATIVE OFFICE OF THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Section 130 of Chapter 1066 of the 1989 Session Laws, the statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Department of Crime Control and Public Safety to conduct the community penalties program, as provided by Part 6 of Article 11 of Chapter 143B of the General Statutes, are transferred to the Administrative Office of the Courts.

The transfer directed by this section shall include two community specialists I, position numbers 4971-0000-0009-120 and 4971-0000-0009-232, and one clerk-typist IV, position number 4971-0000-0009-202. The Office of State Budget and Management shall ensure that the transfer directed by this section is carried out.

Sec. 2. Part 6 of Article 11 of Chapter 143B of the General Statutes, G.S. 143B-500 through G.S. 143B-507, is recodified as Article 61 of Subchapter XIII of Chapter 7A of the General Statutes, G.S. 7A-770 through G.S. 7A-777. The Revisor of Statutes shall change any references to "this Part" to "this Article".

Sec. 3. G.S. 143B-500, as recodified as G.S. 7A-770 by Section 2 of this act, reads as rewritten:

"§ 7A-770. Purpose.

This Article shall be known and may be cited as the 'Community Penalties Act of 1983.' The purpose of this Article is to reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.

(2) Increased opportunities for ~~nonviolent~~ certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of community penalties to assure that they are specifically designed to meet local needs.

(4) Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added."

Sec. 4. G.S. 143B-501, as recodified as G.S. 7A-771 by Section 2 of this act, reads as rewritten:

"§ 7A-771. Definitions.

As used in this Part:

(1) 'Community penalties program' means an agency within the judicial district which shall (i) prepare community penalty plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) monitor the progress of offenders placed on community penalty plans.

(2) 'Community penalty plan' means a plan presented in writing to the sentencing judge which provides a detailed description of the targeted offender's proposed community penalty.

(2a) 'Director' means the Director of the Administrative Office of the Courts.

(3) 'Judicial district' means a district court district as defined in G.S. 7A-133.

(4) ~~'Secretary' means the Secretary of the Department of Crime Control and Public Safety.~~

(5) 'Targeted offenders' means persons convicted of ~~nonviolent misdemeanors~~ misdemeanors, ~~or nonviolent Class H, I, or J felonies~~ Class H felonies other than involuntary manslaughter, or Class I or J felonies, who would be eligible for intensive probation or house arrest, and who are facing an imminent and substantial threat of imprisonment."

Sec. 5. G.S. 143B-502, as recodified as G.S. 7A-772 by Section 2 of this act, reads as rewritten:

"§ 7A-772. Allocation of funds.

The ~~Secretary~~ Director may award grants in accordance with the policies established by this Part and ~~within the limits of any appropriation~~ in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of community penalties programs. Community penalties programs that are grantees shall use such funds to develop, implement, and monitor community penalty plans. Grants shall be awarded by the ~~Secretary~~ Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein."

Sec. 6. G.S. 143B-505, as recodified as G.S. 7A-775 by Section 2 of this act, reads as rewritten:

"§ 7A-775. ~~Advisory~~ Community penalties board.

Each community penalties program shall establish a community penalties ~~advisory~~ board to provide ~~advice~~ direction and assistance to the community penalties program in the implementation and evaluation of the plan. Community penalties boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~advisory~~ community penalties board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~advisory~~ community penalties board shall meet on a regular ~~basis and advise the community penalties program.~~ basis, and its duties include, but are not limited to, the following:

(1) Development of an annual budget for the program;
(2) Hiring, firing, and evaluation of program personnel;
(3) Selection of board members;
(4) Arranging for a private and independent annual audit;
(5) Development of procedures for contracting for services."

Sec. 7. The Revisor of Statutes shall change any remaining references in G.S. 7A-770 through G.S. 7A-777 to "the Secretary" to "the Director".

Sec. 8. Rules adopted by the Department of Crime Control and Public Safety that are in effect on the effective date of this act apply to the Administrative Office of the Courts until amended or repealed by the Administrative Office of the Courts.

Sec. 9. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

HENSON P. BARNES

~~James C. Gardner~~ HENSON P. BARNES
President of the Senate PRO TEMPORE

DANIEL BLUE, JR.

Daniel Blue, Jr.
Speaker of the House of Representatives

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